(20,260.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1906.

No. 296.

ATLANTIC COAST LINE RAILROAD COMPANY, PLAINTIFF IN ERROR,

vs.

J. H. WHARTON, B. L. CAUGHMAN, AND JOHN H. EARLE, AS RAILROAD COMMISSIONERS OF THE STATE OF SOUTH CAROLINA.

IN ERROR TO THE SUPREME COURT OF THE STATE OF SOUTH CAROLINA.

INDEX.

	Original.	Print.
Return to writ of error	1	1
Writ of error	2	1
Citation	4	2
Proof of service of citation	5	3
Bond on writ of error	6	3
Assignment of errors	7	4
Summons	15	9
Complaint	16	9
Order to show cause	19	11
Order to hear return before full court	20	11
Demurrer to complaint	21	12
Opinion on demurrer	28	17
Answer	30	17
Order of reference	35	20

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., JULY 19, 1906.

	Original.	Print.
Evidence before referee	36	20
Testimony of J. J. Bethea	36	21
Exhibit A—Letter, Bethea to Emerson, November 19, 1903	37	21
B—Letter, Royall to Bethea, November 28, 1903	38	22
C—Letter, Bethea to Kenly, December 10, 1903	38	22
Testimony of J. H. Thacker	52	32
H. E. K. Smith	56	35
R. J. Dew	59	36
W. W. Sellers	61	38
J. S. Bethea	63	39
D. McK. Braddy	67	42
E. B. Berry	70	44
J. L. Dew	75	47
E. B. Berry (recalled)	79	49
W. W. George	80	50
W. G. Pace	82	51
J. S. Bethea (recalled)	87	54
M. H. Garrett	88	55
J. E. Henry	90	57
E. T. McCutchen	92	59
J. H. Wharton	95	60
Exhibit E—Letter, Bethea to railroad commission, February 23, 1904	95	61
F—Petition to railroad commissioners	96	61
G—Petition to railroad commissioners	96	62
H—Petition to railroad commissioners	97	62
I—Petition to railroad commissioners	97	63
K—Letter, commission to Royall, March 3, 1904	97	63
L—Letter, Royall to commission, March 7, 1904	98	64
M—Letter, Borden to Royall, March 5, 1904	99	65
N—Letter, commission to Royall, May 12, 1904	100	66
O—Letter, commission to Royall, May 13, 1904	100	66
P—Letter, McCall to Garris, May 26, 1904	101	67
Q—Petition to railroad commissioners	101	67
R—Letter, commission to McCall, May 30, 1904	101	67
S—Letter, Royall to Garris, May 31, 1904	102	68
T—Letter, general superintendent to Bethea, May 30, 1904	102	68
U—Letter, commission to Royall, July 1, 1904	103	69
V—Letter, Royall to Garris, July 6, 1904	103	69
W—Letter, commission to Royall, July 8, 1904	104	70
X—Letter, commission to Royall, July 18, 1904	104	70
Y—Letter, Royall to Garris, July 19, 1904	104	70
Z—Telegram, Royall to Garris, July 22, 1904	105	71
A A—Letter, commission to Royall, July 29, 1904	105	71
B B—Letter, Royall to Garris, August 30, 1904	106	72
C C—Letter, Royall to Duncan, August 30, 1904	106	72
Letter, secretary to Royall, September 1, 1904	106	72
Testimony of J. C. Covington	111	76
H. J. Bennett	117	80
C. S. Evans	124	85
A. L. Calhoun	125	85
J. Strauss	129	89

	Original.	Print.
S. Weill	135	92
Plaintiffs rest	137	93
Testimony of William J. Craig	139	94
H. M. Emerson	157	106
E. Borden	168	112
A. W. Anderson	173	116
Order substituting party plaintiff	180	120
Opinion on the merits	181	120
Petition for rehearing	192	126
Order to file petition and staying proceedings	212	136
Order denying rehearing, &c	213	137
Writ of mandamus	215	137

1 STATE OF SOUTH CAROLINA:

In the Supreme Court.

J. H. WHARTON, B. L. CAUGHMAN, and J. H. EARLE, as Railroad Commissioners, Plaintiffs,

vs.

THE ATLANTIC COAST LINE RAILROAD COMPANY, Defendant.

Return to Writ of Error.

I, U. R. Brooks, Clerk of the Supreme Court of S. C., by way of return to the writ of error directed to said Court by the Supreme Court of the United States in the above entitled cause, hereby transmit under my hand and seal a true copy of the record and of the assignment of errors, and of all proceedings in the case, together with true copies of all opinions filed in the case; and I certify that the record herewith transmitted is complete, containing in itself, and not by reference, all the papers, exhibits, depositions and other proceedings necessary to the hearing of said case.

Witness my hand and the seal of the Supreme Court of S. C. this 9 day of May 1906.

[Seal Supreme Court of South Carolina.]

U. R. BROOKS, *Clerk.*

2 UNITED STATES OF AMERICA, *ss:*

[Seal of the Supreme Court of the United States.]

The President of the United States of America to the Honorable the Judges of the Supreme Court of the State of South Carolina, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Supreme Court before you, or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between J. H. Wharton, B. L. Caughman and John H. Earle, as Railroad Commissioners of the State of South Carolina, plaintiffs, and Atlantic Coast Line Railroad Company, defendant, wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision was against their validity; or wherein was drawn in question the validity of a statute of, or an authority exercised under, said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their validity; or wherein was drawn in question the construction

3 of a clause of the Constitution, or of a treaty, or statute of, or commission held under the United States, and the decision

was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission; a manifest error hath happened to the great damage of the said defendant, Atlantic Coast Line Railroad Company, as by its complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court at Washington, within 30 days from the date hereof, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the 21st day of April, in the year of our Lord one thousand nine hundred and six.

JAMES H. McKENNEY,
Clerk of the Supreme Court of the United States.

Allowed to operate as a supersedeas.
BROWN,
Associate Justice of the Supreme Court of the United States.

4 UNITED STATES OF AMERICA, *ss:*

To J. H. Wharton, B. L. Caughman, and John H. Earle, as Railroad Commissioners of the State of South Carolina, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, withon 30 days from the date hereof, pursuant to a writ of error, filed in the Clerk's Office of the Supreme Court of the State of South Carolina wherein Atlantic Coast Line Railroad Company is plaintiff in error and you are defendants in error, to show cause, if any there be, why the judgment rendered against the said plaintiff- in error as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Henry B. Brown, Associate Justice of the Supreme Court of the United States, this 21st day of April, in the year of our Lord one thousand nine hundred and six.

H. B. BROWN,
Associate Justice of the Supreme Court of the United States.

5 [Endorsed:] I hereby accept service of the within appeal on the part of the Att'y of the A. C. L. R. R. in the case of the R. R. Commissioners of South Carolina *vs.* The A. C. L. R. R. This the 9th day of May 1906 J. H. Wharton Chairman of the R. R. Com. for S. C.

[Endorsed:] I hereby accept service of the within appeal on the part of the Att'y of the A. C. L. R. R. in case of the R. R. Commission of South Carolina *vs.* A. C. L. R. R. Co. Witness my hand & seal the 24th Ap'l 1906. D. P. Duncan Sec. R. R. Com. S. C. [Seal Railroad Commission South Carolina.]

On this 9th day of May, in the year of our Lord one thousand nine hundred and six, personally appeared before me, the subscriber, Henry E. Davis, and makes oath that he delivered a true copy of the within citation to J. H. Wharton, Chairman of the Railroad Commission for South Carolina.

HENRY E. DAVIS.

Sworn to and subscribed the 9th day of May, A. D. 1906.

[Seal Supreme Court of South Carolina.]

U. R. BROOKS,
Clerk S. C. of S. C.

6 *Copy Bond.*

Know all men by these presents, That we, Atlantic Coast Line Rail Road Company as principal, and The American Surety Company of New York, as sureties, are held and firmly bound unto J. H. Wharton B. L. Caughman and John H. Earle Rail Road Commissioners of the State of South Carolina in the full and just sum of Twenty five hundred Dollars to be paid to the said J. H. Wharton B. L. Caughman and John H. Earle their certain attorney, executors, administrators, or assigns: to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 19th day of April in the year of our Lord one thousand eight hundred and ninety-six.

Whereas, lately at a term of the Supreme Court of the State of South Carolina in a suit depending in said Court, between J. H. Wharton B. L. Caughman and John H. Earle Rail Road Commissioners of the State of South Carolina and Atlantic Coast Line Railroad Company a judgment was rendered against the said Atlantic Coast Line Railroad Company and the said Atlantic Coast Line Rail Road Company having obtained a writ of error and filed a copy thereof in the Clerk's Office of the said Court to reverse the judgment in the aforesaid suit, and a citation directed to the said J. H. Wharton B. L. Caughman and John H. Earle Rail Road Commissioners of the State of South Carolina citing and admonishing them to be and appear at a Supreme Court of the United States, to be holden at Washington within thirty days from the date hereof.

Now, the condition of the above obligation is such, That if the said Atlantic Coast Line Rail Road Company shall prosecute its writ of error to effect, and answer all damages and costs if it fail to make its

plea good, then the above obligation to be void; else to remain in full force and virtue.

ATLANTIC COAST LINE RAILROAD COMPANY, [SEAL.]
By P. A. WILCOX, *Its Attorney in Fact.* [SEAL.]
AMERICAN SURETY COMPANY OF NEW YORK, [SEAL.]
By LEONARD DAMMANN,
Resident Vice-President.

Attest: DELMOS C. STUTLER,
Resident Assistant Secretary.
J. R. KENLY,
Third Vice-President.

Sealed and delivered in presence of—
B. H. MARSHALL,
As to Signature of J. R. Kenly.
H. E. DAVIS,
As to Signature of P. A. Wilcox.

Attest: W. R. SULLIVAN, *Ass't Sec'ty.*
[SEAL.]

Approved to operate as supersedeas by—
BROWN,
Associate Justice of the Supreme Court of the United States.

7 Copy.

STATE OF SOUTH CAROLINA,:

In the Supreme Court.

J. H. WHARTON and B. L. CAUGHMAN and J. H. EARLE, as Railroad Commissioners, Plaintiffs,
vs.
THE ATLANTIC COAST LINE RAILROAD COMPANY, Defendant.

Assignments of Errors.

Now comes the Atlantic Coast Line Railroad Company, the defendant in the above entitled cause, and respectfully represents that it feels aggrieved by the proceedings and judgment of the Supreme Court of South Carolina in the above entitled cause, and in connection with its petition for writ of error herein makes the following assignments of error, to-wit:

First.

That the said Supreme Court of South Carolina upon its refusal to sustain the defendant's demurrer to the complaint, denominated petition, filed as an interlocutory decree, dated March 15, 1905,

erred in holding that, the enforcement by mandamus proceedings of the order of the plaintiff, Railroad Commission of the State of South Carolina, attempted to be exercised and enforced under and by virtue of Sections 2069 and 2119 of the Code of Laws of the State of South Carolina of 1902, did not deny to defendant its day in Court on the merits of said order of the Railroad Commission, and did not thereby abridge the privileges and immunities of the defendant as a citizen of the United States, and deprive it of its property without due process of law, and deny to it the equal protection of the laws in violation of Article 14 of the Amendments, Section 1, of the Constitution of the United States.

Second.

That the said Supreme Court of South Carolina upon its
8 refusal to sustain the defendant's demurrer to the complaint, denominated petition, filed as an interlocutory decree, dated March 15, 1905, erred in holding that by virtue of Section 2069 of the Code of Laws of South Carolina of 1902, the Railroad Commission of the State of South Carolina had the legislative function, and in addition to the legislative function, the judicial function, and that the enforcement of said order of the Railroad Commission by a mandamus proceeding, which did not afford to the defendant a trial on the question of fact, or the right of inquiry as to the merits of the order, did not deny to defendant its day in Court, and did not abridge the privileges and immunities of defendant as a citizen of the United States, and did not deprive it of its property without due process of law, and did not deny to it the equal protection of the laws in violation of Section 1 of Article 14 of the Amendments to the Constitution of the United States.

Third.

That the said Supreme Court of South Carolina erred in holding in its final decree of date February 26, 1906, rendered effective April 9, 1906, that the legislative and judicial control by the Railroad Commission and the Supreme Court of the State of South Carolina of defendant's inter-state commerce trains Nos. 32 and 35 by requiring them to stop at the Town of Latta, South Carolina, was not in violation of and in conflict with Section 8, Article 1 of the Constitution of the United States, and the laws of the Congress of the United States enacted thereunder, and was not a direct burden upon inter-state commerce, and was not a direct and unnecessary interference with the right of defendant to perform its obligation as an inter-state commerce carrier of passengers, and was not a direct and unnecessary interference with the speedy carriage of the mails of the United States.

Fourth.

That the said Supreme Court of the State of South Caro-
9 lina erred in not holding in said final decree that it was beyond the power of the Railroad Commission and the Supreme

Court of the State of South Carolina to subject to local control by their orders defendant's inter-state commerce trains Nos. 32 and 35, in particulars not within the right of mere police regulations, in requiring them to stop at the Town of Latta, South Carolina, and in not holding that such an exercise of power was in violation of Section 8, Article 1 of the Constitution of the United States, and the laws of the Congress of the United States enacted thereunder, and was a direct burden upon inter-state commerce, and a direct and unnecessary interference with the right of the defendant to perform its obligations as an inter-state commerce carrier of passengers, and was a direct and unnecessary interference with the speedy carriage of the mails of the United States.

Fifth.

That the said Supreme Court of the State of South Carolina erred in holding in its said final decree, in violation of Section 8, Article 1 of the Constitution of the United States and the laws of the Congress of the United States enacted thereunder, thereby imposing a burden upon inter-state commerce and thereby denying to defendant its rights as an inter-state commerce carrier of passengers, and as a speedy carrier of the United States mails, that the Railroad Commission of the State of South Carolina by its order and the Supreme Court of the State of South Carolina by its decree had the right to require inter-state commerce trains Nos. 32 and 35 of the defendant Company to stop at Latta, South Carolina, on the ground that adequate local facilities otherwise were not provided by defendant Company, when it appears that the question of providing by defendant Company of adequate local facilities was not an issue in the original petition of the people of Latta to the Railroad Commission, or considered by the Railroad Commission of South Carolina, and could not therefore, be used as an excuse for the
10 violation of defendant's inter-state commerce rights.

Sixth.

That the said Supreme Court of the State of South Carolina erred in holding in its said final decree, in violation of Section 8, Article 1 of the Constitution of the United States and the laws of the Congress of the United States enacted thereunder, thereby imposing a burden upon inter-state commerce and thereby denying to defendant its rights as an inter-state commerce carrier of passengers, and as a speedy carrier of the United States mails, that the Railroad Commission of the State of South Carolina by its order and the Supreme Court of the State of South Carolina by its decree had the right to require inter-state commerce trains Nos. 32 and 35 of the defendant Company to stop at Latta, South Carolina, on the ground that adequate local facilities otherwise were not provided by defendant Company, when it appears that the question of defendant Company's providing adequate local facilities was not before the said Supreme Court, except by way of affirmative defence urged by defendant in its answer on the merits, and when it also appears that the Supreme

Court of South Carolina, after appointing its referree to take the testimony, refused, when this report was made to the Court and argued, to consider it, whereas a consideration of and an adjudication upon said testimony would have shown that local accommodations were adequately supplied; and further in refusing to consider the fact as to adequate local facilities, violated defendant's rights and immunities as a citizen of the United States, deprived it of its property without due process of law, and denied to it the equal protection of the laws in violation of Section 1, Article 14 of the Amendments to the Constitution of the United States.

Seventh.

That the Supreme Court of the State of South Carolina erred in holding in its said final decree, in violation of Section 8, Article 1 of the Constitution of the United States and the laws of the
11 Congress of the United States enacted thereunder, thereby imposing a burden upon inter-state commerce and thereby denying to defendant its rights as an inter-state commerce carrier of passengers, and as a speedy carrier of the United States mails, that the Railroad Commission of the State of South Carolina by its order and the Supreme Court of the State of South Carolina by its decree had the right to require inter-state commerce trains Nos. 32 and 35 of the defendant Company to stop at Latta, South Carolina, on the ground that adequate local facilities otherwise were not provided by defendant Company, when if this question of adequate local facilities had been contained in the petition of the people of Latta to the Railroad Commission, and had been considered by the Railroad Commission, and had been considered by the Supreme Court of South Carolina, and had become a judicially ascertained fact against defendant's contention, it could not be used as an excuse for the violation of defendant's inter-state commerce rights.

Eighth.

That the said Supreme Court of the State of South Carolina erred in holding in its said final decree, in violation of Section 8, Article 1 of the Constitution of the United States and the laws of the Congress of the United States enacted thereunder, thereby imposing a burden upon inter-state commerce and thereby denying to defendant its rights as an inter-state commerce carrier of passengers, and as a speedy carrier of the United States mails, that the Railroad Commission of the State of South Carolina by its order and the Supreme Court of the State of South Carolina by its decree had the right to require inter-state commerce trains Nos. 32 and 35 of the defendant Company to stop at Latta, South Carolina, on the ground that adequate local facilities otherwise were not provided by defendant Company when it should have held that if the question of the defendant's providing adequate local facilities had been considered by the Supreme Court of South Carolina and decided adversely to defendant, it could only afford the Railroad Commission and
12 the Supreme Court of the State of South Carolina the right in an inquiry directed to that end to require the Railroad

Company, defendant, to furnish additional and adequate local facilities, and could not give the right of the Railroad Commission and Supreme Court of the State of South Carolina to invade the inter-state commerce rights of the defendant as an original or alternative proposition, and said Court should have held that these local facilities could only be furnished by requiring other trains and more trains, and not require the service by including within its orders the regulation of inter-state commerce trains.

Ninth.

That the said Supreme Court of the State of South Carolina erred in holding in its said final decree, in violation of Section 8, Article 1 of the Constitution of the United States and the laws of the Congress of the United States enacted thereunder, thereby imposing a burden upon inter-state commerce and thereby denying to defendant its right as an inter-state commerce carrier of passengers, and as a speedy carrier of the United States mails that, the Railroad Commission of the State of South Carolina by its order and the Supreme Court of the State of South Carolina by its decree had the right to require inter-state commerce trains Nos. 32 and 35 of the defendant Company to stop at Latta, South Carolina, on the ground that adequate facilities otherwise were not provided by defendant Company, and that the local authorities of the State of South Carolina, including the Railroad Commission of the State of South Carolina, and the Supreme Court of the State of South Carolina have the power to regulate and control inter-state commerce trains of the character of trains Nos. 32 and 35 as they are shown to be in this controversy in regards other than mere police regulations.

Tenth.

That the said Supreme Court of the State of South Carolina
13 erred in holding in its said final decree, in violation of Section 8, Article 1 of the Constitution of the United States and the laws of the Congress of the United States enacted thereunder, that it is only after all local conditions have been adequately met that railway companies doing an inter-state commerce business, have the legal right to adopt special provisions for through traffic.

Eleventh.

That the said Supreme Court of the State of South Carolina erred in holding in its said final decree, in violation of Section 8, Article 1 of the Constitution of the United States and the laws of the Congress of the United States enacted thereunder, thereby imposing a burden upon inter-state commerce and thereby denying to defendant its rights as an inter-state commerce carrier of passengers, and as a speedy carrier of the United States mails that the Railroad Commission of the State of South Carolina by its order and the Supreme Court of the State of South Carolina by its decree had the right to require inter-state commerce trains Nos. 32 and 35 of the defendant Company to stop at Latta, South Carolina on the ground that ade-

quate local facilities otherwise were not provided by the defendant Company, and that the writ of mandamus should be issued, and issuing same so as to require the defendant to stop its inter-state commerce trains Nos. 32 and 35 at Latta, South Carolina, with the alternative provision to provide facilities substantially the same as those which would be afforded the citizens of Latta by stopping inter-state commerce trains Nos. 32 and 35, said alternative requirement being undefined, and being without warrant of law, is based upon a question not decided by the Court, and is without the legal quality of being used as a coercive alternative proposition to control inter-state commerce rights of the defendant.

W. G. ELLIOTT,
14 GEO. B. ELLIOTT,
WILLCOX & WILLCOX,
Defendant's Attorneys.

F. D. McKENNEY,
Of Counsel.

15 THE STATE OF SOUTH CAROLINA:

In the Supreme Court.

C. W. GARRIS, J. H. WHARTON, and B. L. CAUGHMAN, as Railroad Commissioners, Plaintiffs,
against
ATLANTIC COAST LINE RAILROAD COMPANY, Defendant.

Summons for Relief. (*Complaint Served.*)

To the defendant above named:

You are hereby summoned and required to answer the complaint in this action, of which a copy is herewith served upon you, and to serve a copy of your answer to the said complaint on the subscriber at his office in Columbia, S. C. within twenty days after the service hereof, exclusive of the day of such service; and if you fail to answer the complaint within the time aforesaid, the plaintiff in this action will apply to the Court for the relief demanded in the Complaint.

Dated October 14th A. D. 1904.

U. X. GUNTER, JR.,
Attorney General, Plaintiffs' Attorney.

16 THE STATE OF SOUTH CAROLINA:

In the Supreme Court.

C. W. GARRIS, J. H. WHARTON, and B. L. CAUGHMAN, as Railroad Commissioners, Plaintiffs,
vs.
THE ATLANTIC COAST LINE RAILROAD COMPANY, Defendant.

The complaint of the above named plaintiffs respectfully alleges:

I. That the said plaintiffs were at the times hereinafter stated,

and still are, the duly qualified Railroad Commissioners of the State of South Carolina.

II. That the Atlantic Coast Line Railroad Company was at the times hereinafter mentioned, and still is, a railroad corporation organized and existing under the laws of the State of South Carolina, and known by the name Atlantic Coast Line Railroad Company, and was the owner of and operating a certain railroad known as the Atlantic Coast Line Railroad, leading from the town of Wilson, through the towns of Fayetteville in the State of North Carolina, to Florence in the State of South Carolina, and operating a branch line commonly known as the Latta Branch Railroad, leading from the town of Latta in Marion County on said railroad, to the town of Clio in Marlboro County, commonly known as the Latta Branch Railroad.

III. That on June 7th, 1904, certain citizens of the State of South Carolina residing at Latta and along the line of the said Latta Branch Railroad filed a petition with the said plaintiffs as Railroad
17 Commissioners of the State of South Carolina, alleging that the Atlantic Coast Line Railroad Company was furnishing insufficient accommodations for passengers travelling on said railroad, and asking that the said Railroad Company be compelled to stop its passenger trains, Numbers 32 and 35, at its station in the town of Latta when flagged for the purpose of receiving and delivering passengers at said station.

IV. That thereafter, on July 29th, 1904, the said Railroad Commissioners of the State of South Carolina, after investigating the facts stated in said petition, and after notice to and hearing the said above named defendant in reference to the facts of said petition, found as a matter of fact that sufficient accommodation was not furnished the citizens along the said Latta Branch Railroad, and in the town of Latta by the Atlantic Coast Line Railroad Company at its station in Latta, South Carolina, and said Railroad Commissioners thereupon made an order that the said passenger trains Numbers 32 and 35, operated by the said Atlantic Coast Line Railroad Company, should stop when flagged at the said Latta station on and after August 1st, 1904.

V. That a copy of said order of the Railroad Commissioners was served upon the Atlantic Coast Line Railroad Company more than sixty days prior to the commencement of this action, but that the said Railroad Company has neglected and refused to comply with the said order to stop said trains at said station for the purpose of receiving and delivering passengers.

VI. That on October 7th, 1904, the said Railroad Commissioners of the State of South Carolina requested the Attorney General of the State of South Carolina to commence this action on their behalf to compel the said Railroad Company to comply with
18 said order; and to stop said trains, Numbers 32 and 35, on flag at the station in Latta for the purpose of receiving and discharging passengers on said trains.

Wherefore, the plaintiffs pray that a writ of mandamus do issue to require compliance with the said order of the said Commissioners.

U. X. GUNTER, JR.,
Attorney General, Plaintiff's Attorney.

STATE OF SOUTH CAROLINA, *Richland County:*

Personally appeared B. L. Caughman, who being duly sworn says that he is one of the plaintiffs in the above entitled action and that the foregoing complaint is true of his own knowledge.

B. L. CAUGHMAN.

Sworn to before me this 14th day of October, 1904.

D. H. MEANS,
Notary Public, S. C.

19 THE STATE OF SOUTH CAROLINA:

In the Supreme Court.

C. W. GARRIS, J. H. WHARTON, and B. L. CAUGHMAN, as Railroad Commissioners, Plaintiffs,
vs.
THE ATLANTIC COAST LINE RAILROAD COMPANY, Defendant.

On hearing read the verified complaint in the above entitled action, and on motion of U. X. Gunter, Jr., Esq., Attorney General for the plaintiffs it is ordered:

That the defendant show cause before me at my chambers in Marion on the 12th day of November next, at 11 o'clock, a. m. or if any they can, why a writ of mandamus should not issue requiring that the trains mentioned in the complaint be stopped at the defendant's station in Latta for the purpose of receiving and discharging passengers.

That a copy of this order be served on the defendant company with the summons and complaint in this action.

C. A. WOODS,
Associate Justice Supreme Court.

Oct. 15th, 1904.

20 THE STATE OF SOUTH CAROLINA:

In the Supreme Court.

C. W. GARRIS, J. H. WHARTON, and B. L. CAUGHMAN, as Railroad Commissioners, Plaintiffs,
against
THE ATLANTIC COAST LINE RAILROAD COMPANY, Defendant.

Order.

An order to show cause why a writ of mandamus should not issue in the above entitled action having been made by me at chambers on the 15th day of October, 1904, returnable before me this day, and the defendant having made a return to said order by way of demurrer to the complaint, on motion of the Attorney General for the plaintiffs, with consent of counsel for the defendant,

It is ordered,

That the said return be heard before the full Court on the first day of the next ensuing term at 10 o'clck, A. M., or as soon thereafter as counsel can be heard.

C. A. WOODS,
Associate Justice, at Chambers, Marion, S. C.

I consent,

P. A. WILLCOX,
Defendant's Counsel.

November 12th, 1904.

21 THE STATE OF SOUTH CAROLINA:

In the Supreme Court.

C. W. GARRIS, J. H. WHARTON and B. L. CAUGHMAN, as Railroad Commissioners, Plaintiffs,
against
ATLANTIC COAST LINE RAILROAD COMPANY, Defendant.

Demurrer.

Atlantic Coast Line Railroad Company, through its Attorneys, Willcox & Willcox, by way of return, first demurs to the complaint on the ground that it does not state facts sufficient to constitute a cause of action, viz:

I. In that the Railroad Commission, plaintiff, is without power to make the order, the violation of which is alleged as a cause of action.

II. In that the order of the Railroad Commission is not the result of a judicially determined fact and the Defendant, not having had its day in Court on the merits of said order, the enforcement of the order of the Railroad Commission deprives defendant of its property without due process of law and violates the constitutional protection to which defendant is entitled under article I, Sec. 5, of the Constitution of the State of South Carolina, as follows:

"The privileges and immunities of citizens of this State and of the United States under this Constitution shall not be abridged, nor shall any person be deprived of life, liberty or property without due process of law, nor shall any person be denied the equal protection of the laws."

and under Article XIV, Sec. I, of the Constitution of the United States, as follows:

"All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws."

22 III. In that the Court in which this action is brought is without jurisdiction to try the question before it by a proceeding in mandamus, because

(*a*) No statutory authority is given the Supreme Court to hear and determine the issue involved under Section 2069 of the Code of Laws of South Carolina of 1903, if the power of the Railroad Commission to pass the order is question under Section 2096 be otherwise admitted.

(*b*) The Writ of mandamus is solely for the purpose of the enforcement of a plain ministerial duty or that which is duly ascertained and determined in a court of competent jurisdiction and cannot be used as an original proceeding to try and determine the question of right.

IV. In that the complaint alleges that the Railroad Commission has found as a matter of fact that sufficient accommodation was not furnished the citizens along the said Latta Branch Railroad, and in the town of Latta by the Atlantic Coast Line Railroad Company at its station in Latta, South Carolina, (the same not being a judicially determined fact), and the complaint nowhere states as a fact that said accommodations do not exist, which is a fact for judicial determination.

V. In that if it is within the power of the Railroad Commission to require defendant Company to give greater conveniences to a given locality, this power does not embrace the right of the Commission to regulate this convenience by a control of the operation of specific trains.

WILLCOX & WILLCOX,
Defendant's Attorneys.

23 THE STATE OF SOUTH CAROLINA:

In the Supreme Court.

C. W. GARRIS ET AL., &C., Plaintiff-,
against
THE ATLANTIC COAST LINE RAILWAY CO., Defendant.

Opinion.

EUGENE B. GARY, *A. J.*:

This is an application to the Supreme Court, in the exercise of its original jurisdiction, for a writ of mandamus, compelling the defendant, to obey the order of the plaintiffs, requiring it to stop certain trains at its station in the town of Latta, S. C. for the accommodation of passengers.

The following is a copy of the petition:

"I. That the said plaintiffs were at the time hereinafter stated, and still are, the qualified Railroad Commissioners of the State of South Carolina.

II. That the Atlantic Coast Line Railroad Company was at the times hereinafter mentioned, and still is, a railroad corporation organized and existing under the laws of the State of South Carolina, and known by the name Atlantic Coast Line railroad Company, and was the owner of and operating a certain railroad known

as the Atlantic Coast Line Railroad, leading from the town of Wilson, through the town of Fayetteville, in the State of North Carolina, to Florence, in the State of South Carolina, and operating a branch line commonly known as the Latta Branch Railroad, leading from the town of Latta, in Marion County, on said Railroad, to the town of Clio, in Marlboro County, South Carolina, commonly known as the Latta Branch Railroad.

III. That on June 7, 1904, certain citizens of the State of South Carolina residing at Latta, and along the line of the said Latta Branch Railroad filed a petition with the said plaintiffs, as Railroad Commissioners of the State of South Carolina alleging that the Atlantic Coast Line Railroad Company was furnishing insufficient accommodations for passengers traveling on said railroad, and asking that the said railroad company be compelled to stop its passenger trains, Numbers 32 and 35, at its station in the town of
24 Latta when flagged for the purpose of receiving and delivering passengers at said station.

IV. That thereafter, on July 29, 1904, the said Railroad Commissioners of the State of South Carolina, after investigating the facts stated in said petition, and after notice to and hearing the said above named defendant in reference to the facts of said petition, found as a matter of fact that sufficient accommodations were not furnished the citizens along the said Latta Branch Railroad, and in the town of Latta, by the Atlantic Coast Line Company at its station in Latta, South Carolina, and said Railroad Commissioners thereupon made an order that the said passenger trains, Numbers 32 and 35, operated by the Said Atlantic Coast Line Railroad Company, should stop when flagged at the said station on and after August 1, 1904.

V. That a copy of said order of the Railroad Commissioners was served upon the Atlantic Coast Line Railroad Company more than sixty days prior to the commencement of this action, but that the said railroad company had neglected and refused to comply with the said order to stop said trains at said station for the purpose of receiving and delivering passengers.

VI. That on October 7, 1904, the said Railroad Commissioners of the State of South Carolina, requested the attorney General of the State of South Carolina to commence this action on their behalf to compel the said railroad company to comply with said order, and to stop said trains Numbers 32 and 35, on flag at the station of Latta for the purpose of receiving and discharging passengers on said trains."

The defendant demurred on several grounds, the first of which is as follows:

I. In that the Railroad Commission, Plaintiff, is without power to make the order, the violation of which is alleged as a cause of action." Section 2067 code of laws confers upon the Commissioners general supervision of all Railroads in this State. Section 2069 is as follows:

"Whenever, in the judgment of the Railroad Commissioners, it shall appear that repairs are necessary upon any such railroad,

or that any addition to the rolling stock, or any enlargement of, or improvement in, the stations or station houses, or any modification in the rates of fare for transporting freight passengers, or any change in the mode of operating the road and conducting
25 its business, is reasonable and expedient in order to promote the security, convenience and accommodation of the public, they shall give information, in writing, to the corporation of the improvements and changes which they adjudge to be proper; and if the said company shall fail, within sixty days, to adopt the suggestions of said Commissioners, they shall take such legal proceedings as they may deem expedient, and shall have authority to call upon the Attorney General to institute and conduct such proceedings."

Our construction of the statute is that it invests the Commissioners with power to determine the facts stated in their order, but they have no authority to enforce their decision.

Provision is made for the enforcement of their decisions in section 2119 Code of Laws, which is as follows:

"If any railroad company shall neglect or refuse to comply with the provisions of this Chapter or with the rules and regulations prescribed by said Commissioners within the limits of their authority, such company shall be subject to a writ of mandamus, to be issued by any Justice of the Supreme Court, or Circuit Judge, upon application of the Commissioners, or a majority of them, to require compliance with said laws or said rules and regulations, and failure to comply with said writ of mandamus shall be punishable as for contempt; and for any wilful violation of any of said laws, or failure to comply with the requirements of such rules or regulations, the Court may award such costs and counsel fees, on the return of said writs, and after due deliberation, as may be just."

It would have been useless to enact this section, unless the Commissioners are empowered to make a decision upon the matters mentioned in section 2069.

The defendant's attorneys in their argument contend, that the statute does not confer upon the Commissioners, the power to direct *in detail* how, when, and in what manner it shall operate its trains.

In this connection we will consider the ground of demurrer numbered 5, which is as follows:

"V. In that if it is within the power of the Railroad Commission to require defendant Company to give greater conveniences to a given locality, this power does not embrace the right of the Commission to regulate this convenience by a control of the operation of specified trains."

26 The legislature under the police power may require *all* regular passenger trains not engaged in interstate commerce, to stop at certain stations. Gladson *v.* Minnesota 166 U. S. 427.

It therefore necessarily follows that it has the power to compell a less number and may specify the particular trains required to stop at a station.

In the case last mentioned the Court says, "A railroad corporation created by a State is, for all purposes of local government, a do-

mestic corporationm and its railroad within the state is a matter of domestic concern. Even when its road connects, as most railroads do, with railroads in other States, the State which created the corporation, may make all needful regulations of a police character, for the government of the company, while operating its road in that jurisdiction. It may prescribe the location and the plan of construction of the road, the rate of speed at which the trains shall run, and the places at which they shall stop, and may make any other reasonable regulations for their management, in order to secure the objects of the incorporation, and the safety, good order, convenience and comfort of the pasengers and of the public.

All such regulations are strictly within the police power of the State." See also R. R. Com. *v.* Minnesota, 193 U. S. 53, and N. C. Com. *v.* R. R., 49 S. E. 191.

The second ground of demurrer is as follows:

"II. In that the order of the Railroad Commission is not the result of a judicially determined fact, and the Defendant, not having had its days in Court on the merits of said order, the enforcement of the order of the Railroad Commission deprives defendant of its property without due process of law and violates the constitutional protection to which defendant is entitled under Article I, Sec. 5, of the Constitution of the State of South Carolina, and under article XIV. Section 1 of the Constitution of the United States."

The facts were determined by a tribunal well recognized, and adopted, throughout the land.

The defendant was notified appeared, and contested the facts upon the merits.

27 In the case of L. & N. R. Co. *v.* Schmidt 177 U. S. 230. the court uses this language: "It is no longer open to contention, that the due process clause of the Fourteenth Amendment of the Constitution of the United States, does not control mere forms of procedure in State Courts, or regulate the practice therein. All its requirements are complied with, provided, in the proceedings which are claimed not to have been due process of law, the person condemned has had sufficient notice, and adequate opportunity has been afforded to defend."

The third ground of demurrer is as follows:

"III. In that the Court in which this action is brought is without jurisdiction to try the question before it by a proceeding in mandamus, because,

(*a.*) No statutory authority is given the Supreme Court to hear and determine the issue involved under Section 2069 of the Code of Laws of South Carolina, of 1903, if the power of the Railroad Commission to pass the order in question under Section 2069 be otherwise admitted.

(*b.*) The writ of mandamus is solely for the purpose of the enforcement of a plain ministerial duty of that which is duly ascertained and determined in a court of competent jurisdiction and cannot be used as an original proceeding to try and determine the question of right."

The objection urged in subdivision "a" is untenable, for the reason that the jurisdiction of the Supreme Court is not invoked, for the purpose of hearing and determining the issue, involved under section 2069, but to enforce the decision rendered by the Commissioners. Mandamus is not only the usual and proper method of obtaining enforcement of such decisions, but it is the remedy provided by section 2119 code of laws, 23 Enc. of Law 662. This likewise disposes of subdivision "B."

The fourth ground of demurrer is as follows:

IV. In that the complain- alleges that the Railroad Commission has found as a matter of fact that sufficient accommodation was not furnished the citizens along the said Latta Branch Railroad, and in the town of Latta, by the Atlantic Coast Railroad Company at its station in Latta, South Carolina, the same not being a judi-
28 cially determined fact) and the complaint nowhere states as a fact that said accommodations do not exist, which is a fact, for judicial determination."

We have already shown that the Commissioners were empowered to determine the facts set forth in their order.

It is the judgment of this court that the demurrer be overruled, but with leave to the defendant to file a return to the rule to show cause, within twenty days after notice of the filing of this opinion.

A true copy.

[Seal Supreme Court of South Carolina.]

U. R. BROOKS, *Clerk.*

29 [Endorsed:] 5572. The State of South Carolina. In the Supreme Court. C. W. Garris *et al.*, Plaintiffs, *v.* Atlantic C. L. R. R. Co., Respondent. Opinion by Eugene B. Gary, A. J. We concur, Y. J. Pope, C. J., Ira B. Jones, A. J., C. A. Woods, A. J. Supreme Court of South Carolina, Clerk's Office, Columbia, S. C. Filed 15 Mar. 1905. U. R. Brooks, Clerk.

30 STATE OF SOUTH CAROLINA:

In the Supreme Court.

C. W. GARRIS, J. H. WHARTON, and B. L. CAUGHMAN, as Railroad Commissioners, Plaintiffs,

against

THE ATLANTIC COAST LINE RAILROAD COMPANY, Defendant.

Answer.

The defendant, Atlantic Coast Line Railroad Company, by way of return to rule to show cause and by way of answer to the complaint herein and repeating by way of rule to show cause and answer the legal grounds taken as its demurrer to the complaint, alleges:

For a First Defense.

I. Admits the official character of the plaintiffs, as alleged in paragraph one.

II. Answering paragraph two, denies that Atlantic Coast Line Railroad Company is a corporation organized and existing under the laws of the State of South Carolina, but avers that it is a corporation organized and existing under the laws of the State of Virginia, and admits the remaining allegations of paragraph two.

III. Answering paragraph three, admits that a petition was filed by citizens of the State of South Carolina, residing at the station of Latta, S. C., but not along the line of the Latta Branch Railroad; denies that petitioners alleged that Atlantic Coast Line Railroad Company was furnishing insufficient accommodations for passengers travelling on said Railroad, and, on the contrary, avers that
31 the character of the petition was solely for the purpose of requiring the defendant to stop its passenger trains, numbers thirty-two and thirty-five, at the station known as the town of Latta, on flag.

IV. Answering paragraph four of the complaint, the defendant admits that the Railroad Commission of South Carolina may have investigated the facts stated in the petition as filed before them, and admits that defendant was notified and appeared before said Commission, but denies that defendant had such a hearing before the Commission as is required by law, with the privilege of having witnesses sworn to testify against the reasonableness of the petition; it denies that the Commission found, as a matter of fact, that sufficient accommodation was not furnished the citizens along the Latta Branch Railroad and in the town of Latta by Atlantic Coast Line Railroad Company, defendant, at its station in Latta, S. C.; admits that the plaintiffs made an order that said passenger trains, thirty-two and thirty-five, operated by the said Atlantic Coast Line Railroad Company, defendant, should stop, when flagged, at said Latta station on and after August 1st 1904, but denies that the finding of said plaintiffs, Railroad Commissioners, involved a finding of insufficient accommodation, as alleged.

V. Admits paragraphs five and six of the complaint and denies each and every other allegation of the complaint not herein specifically admitted.

For a Second Defense.

The defendant alleges:

I. That sufficient passenger accommodations are now furnished the citizens of Latta and those residing along the Latta Branch Railroad, so that in every respect of passenger travel they are frunished every reasonable facility; that in addition to a number of passenger trains of local character daily, there is also afforded them
32 the convenience of a daily passenger train each way for through travel other than trains thirty-two and thirty-five; that trains thirty-two and thirty-five are known as the Florida and West Indian Limited trains, running between the cities of New York and Tampa, Fla., making a daily connection with steamship lines plying between Tampa, Fla., and Havanna, Cuba; that said trains are primarily for the purpose of through passenger traffic, which cannot be accommodated otherwise; that said trains are engaged in

the interstate transportation of passengers and United States mail through the States of New Jersey, Delaware, Pennsylvania, Maryland, Virginia, North Carolina, South Carolina, Georgia and Florida, with through connections at the city of New York and at Tampa, Florida, and intermediate cities with what is known as the wider traveling public that cannot be accommodated by defendant if these trains are localized; that the through travel, the carrying of United States mail and interstate commerce travel has grown to such an extent that it can only be accommodated by operation of the trains in question, running a very fast schedule, stopping at only necessary points; that these trains are operated for this class of business, other trains affording ample accommodations and facilities for all other business; that the trains in question, now stopping only at necessary points, are run necessarily with a very fast schedule, in order to accommodate the business described, and if the trains are required to stop at Latta, S. C. and points similar to the station of Latta, S. C., the running time of these trains will be much lengthened, their usefulness for their primary object would be entirely destroyed, said trains could not be operated and the defendant company would be denied one of its principal sources of revenue and its ability to accommodate the business described; that the defendant operates
33 these trains at a great expense, with every available modern equipment for the accommodation of through travel, and in its competition with other through (travel) lines in the business involved, must maintain their efficiency as to fast schedules and in other respects, and if these trains are interferred with by local legislation of the character involved and are required to stop at Latta, S. C. and similar points, the defendant will be unable to compete with other similar trains operated by competing lines and must abandon these trains and the business in question; that the trains in question are not regular passenger trains for carrying passengers from one point to another in the State of South Carolina, such traffic being amply provided for by other trains; that the trains in question are used exclusively for interstate traffic from and to points without the State of South Carolina, except such traffic as may be accommodated by the stopping of these trains at points necessary in their being operated for their primary purposes as interstate commerce trains; that these trains are not subject to regulation by the Statutes of the State of South Carolina, or by its Railroad Commission, under the circumstances involved in the alleged cause of action, and to stop them, as prayed for, would impede and obstruct interstate commerce and deny to plaintiff a rightful and judicious management of its property. That said order of the Railroad Commission of South Carolina is unreasonable, unnecessary; a direct burden upon interstate commerce and therefore, a violation of and conflict with Section 8, of Article 1 of the Constitution of the United States, which provides that Congress shall have the power to regulate commerce with foreign nations and among the several states, and further, that said order is a direct and unnecessary interference with the speedy carriage of mails of the United States.

WILCOX & WILCOX,
Defendant's Attorneys.

34 STATE OF SOUTH CAROLINA, *Florence County:*

Personally appeared P. A. Willcox, who being duly sworn says that he is a Division Counsel of Atlantic Coast Line Railroad Company, defendant; that the allegations of the foregoing answer are true of his own knowledge, except such matters as are stated on information and belief, and as to such matters he believes them to be true; that this verification is not made by defendant because defendant is a corporation.

P. A. WILLCOX.

Sworn to before me this 10th day of April, A. D. 1905.
WALTER H. WELLS, [L. S.]
Not. Pub. for S. C.

35 STATE OF SOUTH CAROLINA:

In the Supreme Court.

C. W. GARRIS, J. H. WHARTON, and B. L. CAUGHMAN, as Railroad Commissioners, Plaintiffs,
against
THE ATLANTIC COAST LINE RAILROAD COMPANY, Defendant.

Order.

The defendant's answer and return having been filed herein, it is, on motion of the Attorney-General,

Ordered, That it be referred to F. F. Covington, Esquire, to take testimony on all issues involved and report the same to this Court, as soon as the convenience of all parties interested in the taking of said testimony will permit, and said Referee is hereby empowered to report any special matter.

Y. J. POPE,
Chief Justice of the Supreme Court of South Carolina.

36 STATE OF SOUTH CAROLINA, *Marion County:*

C. W. GARRIS, J. H. WHARTON, and B. L. CAUGHMAN, as Railroad Commissioners, Plaintiffs,
against
THE ATLANTIC COAST LINE RAILROAD COMPANY, Defendant.

LATTA, S. C., *July 27th*, 1905.

Pursuant to an order of the Supreme Court hereto attached, a reference was held by me today, July 27th, at Latta, S. C., in the above entitled cause.

Present: J. H. Wharton and J. H. Earle, representing Board of Railroad Commissioners, Plaintiffs, and A. W. Anderson, General Superintendent of the Atlantic Coast Line Railroad Company, rep-

resenting the Defendant Railroad Company; W. H. Townsend, Assistant Attorney General, and M. C. Woods, Esq., representing Plaintiffs, and Messrs. P. A. Willcox, J. M. Johnson and Henry Mullins, representing the Defendant Railroad Company.

Before beginning the taking of testimony it was understood that all testimony would be taken subject to objection, and it was agreed that testimony objected to need not be taken on a separate sheet and that the testimony need not be signed by the witnesses.

The following testimony was heard:

J. J. BETHEA, called as a witness on behalf of the Plaintiffs, having first been duly sworn, was examined in chief by Mr. Woods, and testified as follows:

Q. Mr. Bethea, where is your residence?
A. Here, sir.
Q. And your business?
A. Here.
Q. What is your business?
A. I am a merchant and farmer.
37 —. Up to the year of 1905 did you hold any official position in Latta, and if so, for how long?
A. I was Intendant, sir, for two years in connection, 1904 and 1903.
Q. Did you as such Intendant believe that the accommodations furnished the people were insufficient?
A. Yes.
Q. And, upon your opinion, make any effort to secure better accommodations?
A. Yes, sir.
Q. Well, now, state the history of this matter, what you did?
A. Well, sir, I wrote to the Railroad officials several times, asking them for better accommodations.

Objected to on the ground that any correspondence should be produced. Counsel for defendant state that they are willing for copies of letters to be used.

Letter from J. J. Bethea to H. M. Emerson, dated Nov. 19, 1903, offered in evidence; objected to as irrelevant and as being nothing more than a declaration on the part of Mr. Bethea and on the further ground that it is not a part of the petition involved in the complaint; introduced subject to objection as Exhibit A. The letter is as follows:

LATTA, S. C., *November* 19, 1903.

Mr. H. M. Emerson, Wilmington, N. C.

DEAR SIR: Our town is progressing very rapidly and people are moving in here to get the benefit of the school and church advantages; and others would come, but say the means of getting out and in town by rail is too bad. We want it so we can go South to Charleston, Columbia, or anywhere in that direction and get home without having to lay over. As it is we can go to Wilmington,

N. C., all O. K., but we can't get home when we get off without laying over in Florence or somewhere.

Please look into this matter at once, as we and the people on the Latta Branch road are at a disadvantage with the adjoining towns, and please let me hear from you at once in regard to this matter, as I must do something.

Awaiting your very prompt attention, I am,

Very respectfully,

(Signed) J. J. BETHEA,
Intendant, Town of Latta, S. C. [SEAL.]

38 Letter from W. N. Royall to J. J. Bethea, dated Nov. 28, 1903, offered in evidence; objected to on same grounds as to Exhibit A. Introduced in evidence subject to Objection as Exhibit B. This letter is as follows:

WILMINGTON, N. C., *Nov.* 28, 1903.

Mr. J. J. Bethea, Intendant, Latta, S. C.

DEAR SIR: Referring to your letter of the 19th inst., addressed to Mr. H. M. Emerson, which has been referred to me by Mr. J. R. Kenly, our Fourth Vice-President.

We have looked very carefully into this matter, and I regret to say that the schedule of our Train No. 32, which has just been arranged for our winter season, will be so fast that it will be impossible for us to make an additional stop with this train between Florence and South Rocky Mount. The schedule is a very fast one and the train is quite heavy, and we are unable at present to make up any time, and it is with great difficulty that we can hold to the present schedule figures. It would give us pleasure to comply with your request if it was in our power to do so.

Yours truly,

(Signed) W. N. ROYALL,
General Superintendent.

Letter from J. J. Bethea to J. R. Kenly, dated Dec. 10, 1903, offered in evidence; objected to on same grounds as to Exhibit A. Introduced in evidence subject to objection, as Exhibit C. This letter is as follows:

LATTA, S. C., *Dec.* 10, 1903.

Mr. J. R. Kenly, Wilmington, N. C.

DEAR SIR: Yours to hand and in reply will say that all we ask for is better accommodations so we can get in here from the South at night. As it is we have to lay over at Florence or elsewhere. We have always been a very modest people; never asked for a passenger depot and freight too, nor have we ever been before the R. R. Comm., but appeal to you. We want it so fixed that we can get in here from Florence at night. We don't ask for fast trains to stop but we want better accommodations.

Let me hear from you at once, as we feel as much of importance as our sister towns—Marion and Dillon—and insist on you to serve us

with (without?) having us to take any further action in this matter.

Awaiting your attention, I am, sir,

Very truly,

(Signed) J. J. BETHEA,

[SEAL.] *Intendant, Town of Latta, S. C.*

39 Q. Mr. Bethea, as a matter of fact, did Mr. Royall or any one connected with the railroad agree to furnish what you regarded sufficient accommodations, and if not, then what did you do?

Objected to as purely a matter of opinion.

Q. Did Mr. Royall or the Coast Line, after complaint made to them, furnish accommodations.

Objected to as purely a matter of opinion, as being a legal conclusion.

A. Well, sir, it will take some little time to explain it. They were very slow about it. I was coming from the up-country one night. There was a gentleman with me who had a ticket for this place. I had one. I was sick——

Q. What point in the up-country?

A. From Greenville. I was sick. I didn't care to be worried at all. I had nothing to say at all. He threatened that night to sue the railroad company because they carried us on by, carried us to Dillon; and I was very sick that night myself. Well, soon after that Mr. Royall wrote me—I never said a word to him about this—that they would try to change the schedule of the Latta Banch train so as to meet that very objection.

Q. That is, for parties coming from the up-country?

A. Yes. I was told by a railroad man they had got uneasy about that case; but of course I can't bring that out.

Mr. WILLCOX: We object at this point to the answers of the witness so far as not responsive to the question, and will move to strike out.

Q. Mr. Bethea, is there much travel between this point and points beyond Columbia, and Columbia, and points on the road
40 leading through Orangeburg to Augusta?

A. Yes, sir, I think there is a good deal.

Q. Mr. Bethea, is it possible to go from Latta to the up-country and get a through connection? What do you have to do?

A. Well, sir, we have to go to Columbia, pay a hotel bill, and wait until next day.

Q. Wait until the next day?

A. Yes, sir, or lie over in Florence.

Q. What about points on the Augusta road?

A. Well, I don't know the connection there.

Q. You have had no experience going to Orangeburg and points there?

A. No, sir.

Q. If you wish to go to points on the Greenville road, as I understand, you have to lie over?

A. Yes, or to Spartanburg; anywhere that you pass through Columbia.

Q. How about Chester, and Yorkville?

A. Anywhere that you pass through Columbia, as far as I know. That has been my experience. I know it is to Spartanburg.

Q. Mr. Bethea, how many trains are there between here and Columbia a day, that is, trains that stop at this point?

A. Well, there is only one, sir; you might say only one. Of course the Latta Branch runs from here there, but there is only about an hour's difference in the run at night, and I don't know whether it makes connection when it gets there or not. Really, only one.

Q. What is the number of the train you get connection on? What time does it pass here?

A. Seven o'clock in the evening. I don't think we can leave here in the morning and get to Columbia.

Q. Are you sure about that?

A. Well, I would like to ask something about the connection. I know when Clide goes to Wofford College he has to always
41 go at night and I have to pay a hotel bill in Columbia for him. And my wife has done the same thing, and I have had it to do. And I have been told by the railroad people that there was no connection, that it was useless to go in the morning. We can go to Charleston.

Q. You can go to Charleston twice a day, then?

A. Yes, sir.

Q. You can only go to Columbia and the up-Country once a day?

A. That has been my understanding.

Q. As mayor of the town, were very many complaints made to you about the connections here?

Objected to as irrelevant and leading.

A. That really started the fight.

Q. The complaints people made to you?

A. Yes, sir. They seemed to think I was the man to push it.

Q. What size place is Latta now?

A. I suppose we have something like a thousand inhabitants. We haven't had a census taken here.

Q. Has the growth been very rapid in the last few years?

A. Yes, sir.

Q. What about the country back of it?

A. In what respect?

Q. What about the growth of the country and the number of people who come here to take the train?

A. I saw a man a while ago who wanted to go away and he said he wanted to take 32 tonight and would have to go to Dillon.

Objected to as being irrelevant and pure hearsay.

Q. Is Latta a junction?

A. Yes, sir.

Q. Is there a road leading back from Latta?

A. Yes, sir; to Clio.

42 Q. What is the length of that road?

A. I think about twenty miles.

Q. Does that pass through a very thickly-settled country?
A. Well, sir, it is right—yes; on the road there is points where it is not thick, but nearby it is.
Q. The country tributary to that road, I will say?
A. Oh, yes.
Q. Is the travel heavy?
A. I don't know, sir. I never go to the depot, hardly; only on business.
Q. When you were mayor, as a matter of fact did you have a great many complaints from the people in the back territory and Clio?

Mr. WILLCOX: We object to all questions as to the Latta Branch road as irrelevant. We object to any declarations of other parties by way of complaints through Mr. Bethea, the witness, as hearsay, secondary evidence, and irrelevant.

Q. Mr. Bethea, we will start at it differently. In what Counties is the Latta Branch road located?
A. Marion and Marlboro.
Q. In South Carolina?
A. Yes, sir.

Mr. Willcox objects to all questions concerning the Latta Branch road on the ground of irrelevancy.
Q. As a matter of fact, did there come to you many complaints from the people in the territory tributary to the Latta Branch railroad about the accommodations furnished here?
A. Yes, sir.
Q. A large number?

Objected to as irrelevant and secondary evidence.

Q. Now, Mr. Bethea, is the volume of travel from this point large?
A. Well, sir, it is not near what it would be if we had the proper accommodations.

43 Objected to as being simply a conclusion without statement of fact to base it upon.

Q. Is the volume of travel large, as a matter of fact, without the accommodations? Is this a large passenger point?
A. Yes, sir.
Q. Now parties desiring to catch trains 35 and 32, what do they have to do?
A. They go to Florence or Dillon.
Q. How far is it from here to Florence.
A. It is about 24 miles.
Q. And that involves how much extra expense?
A. Well, the expense there and back here.
Q. The railroad forces you to pay that mileage?
A. Yes.
Q. Is there any other way you can catch trains 35 and 32?
A. Except only to go to Dillon and Florence.
Q. How much distance is that?

A. To Dillon?
Q. Yes?
A. It is about seven miles, I think.
Q. You have to drive to Dillon?
A. Yes, sir. In the winter it is one of the worst roads that ever was made a road, I reckon.

Mr. WILLCOX: That is the fault of Marion County—not the railroad.

Q. Is the railroad to blame for that bad road, a part of it? How about the Buck Swamp crossing?

Objected to as irrelevant.

Q. Is the Buck Swamp crossing dangerous?

Objected to as irrelevant.

A. It has always been considered so.
Q. How do you consider it?
A. Oh, I think it is a very dangerous place.

Objected to as being a matter of opinion without a statement of fact to base it upon.

44 Q. Mr. Bethea, have you observed many people having to drive to Dillon to take this train?
A. Oh, yes, sir.
Q. A large number?
A. A good many.
Q. Mr. Bethea, did you have any conversation with Mr. W. N. Royall about ticket arrangements at this place?
A. Yes, sir; correspondence, too.
Q. Well, the correspondence I haven't. What did he promise you to do when you saw him on the train?
A. I didn't see him on the train. He just simply wrote me he would take up the matter, and he done it; sent a man down here, who I found very agreeable. He stayed here for some time and investigated matters and he come to me and told me, "I am glad to be able to report favorably."
Q. Favorably on what?
A. That we would have a coupon office—that is what I asked him for. And Mr. Royall wrote me in a few days he was glad to say to me that this would be a coupon office from now on. Then at Florence Mr. Royall last—I think perhaps it was in December—Mr. Berry and myself met Mr. Royall in Florence and Mr. Royall went on in saying that he had always tried to be as accommodating to us as he could be. He said to me, "Mr. Bethea, recently you have asked to make Latta a coupon office and," he says, "I took the matter up at once, and you have a coupon office." I said, "I am sorry to tell you, Mr. Royall, we can't get a ticket anywhere. We can come to Florence; we can go to Fayetteville."
Q. So that only local tickets have been on sale?
A. He says, "Well, it was the agent's fault; it was a coupon office."

Question and answer as to Latta being a coupon office objected to as irrelevant.

45 WITNESS: Mr. Royall seemed to be very much surprised when I told him we couldn't get a ticket anywhere.

Q. What about mileage tickets?

A. Well, I have never bought one, sir. I guess you can get one here. I don't know whether you can or not.

Q. So you can't get through tickets here, you buy local tickets?

A. Have to buy local tickets.

Mr. WILLCOX: We make the same objection to all these questions.

Atlantic Coast Line folder for June 19th, 1905, offered in evidence.

Mr. WILLCOX: We have no objection to its going in, on the assumption that it will be used by both parties—so much of it as may be relevant.

Introduced in evidence and marked Exhibit D.

Q. You say Mr. Royall promised to make this a coupon office?

A. He said he had done it.

Q. Look at that and see if Latta is named as a coupon office? (Showing witness Exhibit D.)

A. I looked at it this morning, sir; I don't think I saw any.

Q. Do trains 32 and 35 stop at any point between the North Carolina line and Florence?

A. Stop at Dillon.

Objected to as irrelevant.

Q. Mr. Bethea, is there a water tank at Dillon?

A. I don't know, sir. I don't know whether there is or not.

Q. They do local business, then, between Florence and Dillon?

A. You mean the Coast Line?

Q. Yes, sir. Do they take on local passengers at Florence for these two points? Can you get on at Dillon and go to Florence, and get on at Florence and go to Dillon?

46 A. Yes, sir; oh, yes, sir.

Cross-examination.

By Mr. WILLCOX:

Q. Mr. Bethea, how many trains did you say passed Latta a day—stopped at Latta?

A. You mean going that way (towards Florence), going south?

Q. Going south?

A. There is only one passenger train—except the Latta Branch train. That is the statement I made. It passes here about 7 o'clock in the afternoon.

Q. Mr. Bethea, kindly refresh your recollection as to existing passenger trains, and begin as early in the day as any passenger train passes by Latta, stops at Latta and passes Latta, and for our information give us the number of passenger trains, or trains containing passenger accommodations, that stop at Latta? Begin in the first part of the day.

A. You mean and including the Latta Branch, too?
Q. Yes, sir.
A. I thought you said awhile ago you didn't want that in it at all.
Q. I didn't ask you to testify as to that so much as I asked you to testify as to the trains that stop at Latta. Now where they come from is, of course, strictly irrelevant, under our contention, and I ask you as to the trains that stop at Latta. That is all. The question would seem to be perfectly plain.
A. Well, the first train we have here in the morning is at 8 o'clock, coming from Clio, and then to Dillon.
Q. Does it stop at Latta before it goes to Dillon?
A. Yes.
Q. Well, kindly say that is one stop?
A. All right.
Q. What is the time of that stop?
47 A. About 8 o'clock. Then the same train returns from Dillon; comes back here; stops——
Q. At what time?
A. In about thirty minutes.
Q. About 8.30?
A. Somewhere along there. I don't know exactly the time. Then it takes you to Pee Dee; then comes back here;——
Q. Now, one moment. What connection does it make at Pee Dee?
A. It connects with the Wilmington train, sir, coming from Wilmington and going to Florence; the morning train.
Q. What other trains?
A. No other;—Yes, and also there is one going to Wilmington; that is, you will have to wait there a long, tedious wait.
Q. How long?
A. I don't know. Sometimes it is several hours; three or four hours.
Q. How about the schedule, though? What is the wait according to the schedule?
A. Well, I suppose it would be about an hour.
Q. Now, just go on, please, and trace up that train.
A. Then it comes back here; gets back here about ten o'clock——
Q. That is, to Latta?
A. Yes, sir.
Q. It leaves Pee Dee and comes back here to Latta and stops here. At about what hour?
A. Well, something like ten o'clock; not far from it.
Q. Now, trace up that train again, please, Mr. Bethea; its further perambulations?
A. Begin again?
Q. No, sir. You have got it to that point?
A. Well, the next train that comes to Latta——
Q. Let's trace up that train first, before we get through with it. Follow that train, please?
A. I thought you didn't want me to touch that train a while ago?

Now you seem to be anxious about it. Well, sir it goes back
48 to Clio about 11 o'clock.

Q. Leaves here about 11? Leaves Latta about 11?

A. Yes, sir, about a quarter past 11, I think. Then it gets back here about six o'clock.

Q. Comes back to Latta at six?

A. Yes, sir. It lies here until, I think it is about 7.50, perhaps. Then she goes to Pee Dee again.

Q. At about what hour?

A. Oh, I don't know what time she gets to Pee Dee; it leaves here about 7.50.

Q. Well, about what hour does it get to Pee Dee?

A. I don't know.

Q. Ever been on it?

A. Yes, but I didn't think about it. I knowed we had plenty of time.

Q. Well, it gets to Pee Dee at some time before 8?

A. Oh, they make good time going down there.

Q. When it gets back to Pee Dee what does it connect with?

A. Well, sir, it connects with the Wilmington train again, going to Wilmington.

Q. Does it connect with the train going to Florence?

A. No, sir, I don't think it does. I think you have to take the 7 o'clock train. I think they all do that, generally; they may if it is late; but I have heard several say they wouldn't risk it. They would always go on the 7 o'clock train. My understanding was it didn't connect with that train at all; it connected with nothing when it first got there, and only lay there and waited for the train going to Wilmington.

Q. Well, I don't know; I am just asking you these questions. Can't you leave on that train from Latta, get off at Pee Dee, and then get on the train from Wilmington to Florence?

A. I don't know; I have never tried it. Everybody don't
49 do it.

Q. You at least connect with the Wilmington train going from Charleston to Wilmington, or from Florence to Wilmington?

A. Yes, sir.

Q. What becomes of that train then?

A. Which?—the Latta Branch?

Q. Yes?

A. It comes back here.

Q. Does it stop at Latta?

A. Oh, yes, sir.

Q. What time does it get here?

A. I don't know what the schedule time is. It is something not far from 11 o'clock when it leaves here.

Q. Then where does it go?

A. Goes to Clio; some time between 10 and 11, I don't know when.

Q. What other passenger trains have you passing Latta, I mean stopping at Latta?

A. In the morning, at half past ten, we have the regular mail train passing, going north.
Q. At what hour does it stop at Latta?
A. At about half past ten.
Q. That is the regular passenger train?
A. Yes.
Q. Run sleepers?
A. I guess so; I don't know.
Q. Sleeping cars?
A. It runs a Pullman.
Q. That is what I mean.
A. One Pullman car.
Q. Do you know where that train runs from; from what point to what point?
A. Oh, I guess it comes from Washington City.
Q. Well, not the one going that way, of course?
A. Yes; that is the one I am talking about now; I don't know where it comes from.
Q. But the one that comes up here goes to Washington, doesn't it?
A. Yes.
Q. It comes from what point?
50 A. I don't know; down south somewhere.
Q. What is the next train?
A. Then that afternoon at 7 o'clock—supposed to be the same train, running over the same route.
Q. Coming from what direction?
A. From the north, going south.
Q. Stops at Latta?
A. Yes.
Q. Have you stated the time?
A. Yes. I have just stated 7 o'clock.
Q. Does that run sleeping cars?
A. One pullman, sir.
Q. You can go on to Florence on that train?
A. Yes.
Q. Or stop at Pee Dee and take the Wilmington train?
A. Yes, if you want to go to Wilmington.
Q. You stated that ran a Pullman also, carried a Pullman?
A. Which?
Q. That train?
A. Yes, it carries a Pullman.
Q. Mr. Bethea, any other trains stopping at Latta during the day, during the period you have described, that accommodate passengers?
A. Freight trains, I think, sir,—some people—where they can't make connections any other way they take the freight.
Q. How many freight trains?
A. Well, we usually have one going north and one south.
Q. What time?
A. I don't know.
Q. Well, about what time?

A. From 12 to 1.
Q. Going south?
A. Yes.
Q. Has that passenger accommodations?
A. It has a caboose.
Q. Has it a coach?
A. Awful rough one.
Q. Well, has it a coach?
A. Some kind of a thing; it is a mighty sorry one, though.
51 Q. Doesn't it have a coach?
A. Yes, sir.
Q. It is not a caboose?
A. That is what I call it.
Q. Do you know the difference between a coach and a caboose?
A. No. I am not a railroad man.
Q. Then you wouldn't undertake to describe it?
A. No.
Q. When does that train pass Latta, going back?
A. You mean that one going south?
Q. Which one did you describe just now?
A. That was the one.
Q. When does it stop, going back?
A. Then one comes before dinner, going north.
Q. About what time?
A. I don't know her schedule, but she comes sometimes before the passenger and sometimes behind it; according to how much she has to do.
Q. That has passenger accommodations?
A. Yes, sir.
Q. Has a coach?
A. Yes, sir. Oh! they run, too, sometimes. I come from Dillon in seven minutes the other day!
Q. Seven minutes?
A. Yes, sir, that's just what I made it by my watch. A mile a minute!

Redirect examination.

By Mr. Woods:

Q. None of those numerous trains you have described give but one connection for the up-country, do they—Sumter, Columbia, and the up-country?
A. That is my understanding, sir.
Q. And which one is that?
A. That is the train at night, sir.
Q. Passing here at what time?
A. Seven o'clock.
Q. In taking that train in going to the up-country, it is impossible to get to the up-country from Latta without passing the night at Columbia?
52 A. Yes,—Sumter or Florence or somewhere.
Q. If train 35 stopped would it be necessary for you to lie over.

A. Well, sir, she has never stopped for me; I have heard it wouldn't.

Q. It was your understanding it would give you the connections for the up-country?

A. Yes, that is my undertsanding.

Rev. J. H. THACKER, called as a witness on behalf of the Plaintiffs, having first been duly sworn, was examined in chief by Mr. Woods and testified as follows:

Q. What is your business?

A. I am living here now, and in charge of the Methodist church here.

Q. Just state what you know about the volume of business for the up-country, and about the connections, and what experience you have had?

A. Well, as to the volume of business, of course I am not in the business world, and know very little about that,—so far as the amount of travel. I have known quite a number of people who wanted to make connections from this point to other points that were put to inconvenience to make them. So far as I am personally concerned, all I could say from a personal standpoint is that I have wanted to go to the up-country once or twice since I have been here and I have to take a train which would cause me to lie over either in Sumter or Columbia each time. Last summer just after our daughter got over a spell of typhoid fever the doctor thought it was necessary for us to go to the up-country. I went to the agent at this place to know if it would be possible to get this fast train going at 4 o'clock, passing here about 4 o'clock in the morning, if it would be possible to get that train to stop here so we could make
53 the trip and get to our destination about 3 o'clock in the afternoon. He said it would be impossible.

Q. The stopping of that train would have furnished the accommodation you wished for the up-country?

A. That is, I could have gone beyond Columbia in one day. But as I couldn't get that train to stop I took that 7-o'clock train, going south, and had to spend the night either in Sumter or Columbia and then go on the next day; which we did so,—took that train.

Q. What point in the up-country were you going to?

A. We were going to Laurens.

Q. Does this testimony that you have given as to those accommodations apply to all points, to Columbia and all points beyond Columbia?

A. Yes, sir. You can't go to Columbia by taking any morning train that leaves here, except that train which passes here about 4 o'clock—which does not stop here.

Q. If that fast mail stopped it would give you a morning connection with Columbia and the up-country?

A. Yes, sir.

Q. Which you have not now.

A. Yes, sir.

Q. And you say there is a large volume of travel, so far as your

observation extends, that wishes that connection?

A. Well, you know a "large volume" is a relative term, of course; quite a number of people do want that connection.

Q. That's what I mean.

A. Yes, quite a number of people. For instance, I had a neighbor who had to go to the up-country. He took his family about midnight and drove to Dillon in order to catch that train.

Q. Then you know it to be a fact that parties drive to Dillon to get the Columbia connection?

A. Yes, sir.

54 Cross-examination.

By Mr. WILLCOX:

Q. What kind of connection do you say that you would make going to Sumter, going to the up-country, provided tra-n 35 would stop at Latta?

A. Well, I don't know those numbers, now; is that the one going south?

Q. Yes, sir, at 3 or 4 o'clock in the morning.

A. If train 35 would stop here I could go to Sumter, which I could make connection then with the train going from Charleston through Columbia to Laurens; wouldn't have to stop any more. That train leaves Sumter, I think, about 9.30. Whereas, if I can't get that train, I can't get to Columbia at all until that night.

Q. Can't you leave Latta on train 39—that is the train that comes by here in the afternoon—and go through to Sumter and make the same connection?

A. No, sir, not without spending the night.

Q. Where?

A. At Sumter.

Q. You can make the connection?

A. If I take train 39, going south, I will go to Sumter and get into Sumter in the night, spend the rest of the night there.

Q. At what time?

A. I think it gets there about 9.30. Then I spend the night there and take then that 9.20 train leaving Sumter for Columbia and Greenville next morning.

Q. Which is the same train you would take from Sumter provided you went on 35?

A. Yes, sir.

Q. So the difference in the two accommodations, then, in your mind, is the difference from spending the entire night in Sumter and having your rest broken in Latta by getting up at 3 o'clock in the morning? Isn't that the difference?

A. No, sir, not entirely; because a man who has to keep
55 the sifter going on a limited salary has to look out for hotel bills.

Q. Isn't that the difference between the two?

A. Well—the hotel bill involved, also.

Q. Well, you can put that in, but I am asking you if the differ-

ence between the two connections isn't the difference between leaving here for Sumter on 39 at night, going to Sumter and taking the train for the up-country next morning, and, on the other hand, getting up at 3 o'clock in the morning and taking the train for Sumter? Isn't that the actual difference?

A. No, sir, I wouldn't say so. Because we can get up in the morning and make the trip in the same day, without interruption except at Sumter; but we have to start the day before, at 7 o'clock, in order to get to our destination by 3 o'clock the next day. Whereas we can leave here between 3 and 4 o'clock in the morning and get to that destination.

Q. Isn't that the difference, then?

A. It is, in the matter of time.

Q. In the matter of taking the trains that is the difference?

A. In the matter of time that is the difference; because we save just that much time.

Redirect examination.

By Mr. WOODS:

Q. You save the hotel bill, too?

Objected to as leading, and, if placed in a different way, as irrelevant.

Recross-examination.

By Mr. WILLCOX:

Q. Mr. Thacker, can't you leave on train 39 at night, at 7 o'clock, and go on through to Columbia without stopping at Sumter?

A. Oh, yes. But then the same conditions exist there.
56 You have got to pay a hotel bill there. For instance, I had my whole family, had to carry my whole family. We were all broken down with waiting on a case of typhoid fever for forty some odd days. The doctor advised me that we all go, and the hotel bill was quite an item to me. I would have to pay that hotel bill in Columbia just the same as I did in Sumter.

Q. Hotel bill—sleeping and eating—is an ordinary incident of travel, isn't it?

A. Well, it is a very extraordinary one to some folks; it is to me.

Mr. WOODS: Is your family quite large and the hotel bill a considerable item?

A. Yes.

Objected to as irrelevant.

H. E. K. SMITH, Called as a witness on behalf of the Plaintiffs, having first been duly sworn, was examined in chief by Mr. Woods, and testified as follows:

Q. Where do you reside and what is your business?
A. I live about four miles below here, and farm.
Q. Is this your railroad station?
A. Yes, sir, this is the nearest.
Q. Mr. Smith, state what you have observed as to the volume of travel going to the up-country points, and railroad connections, any personal experience you and your family have had?
A. Well, I have had a little personal experience,——

Mr. WILLCOX: We object to his personal experience, as irrelevant.

Q. Go ahead.
A. Well, some of my family has had a little more personal experience than I have. I have had a son who has been at Spartanburg for the last four years and he can't get from Latta the
57 same day. He always has to spend the night in Columbia.
Q. He might spend it in Sumter might he not?
A. Yes, I suppose he could; but he usually spends it in Columbia.
Q. Have you ever had any sickness in your family?
A. Yes, my wife's health has been poor and I taken her to Chick Springs just a short time ago, and I had the same experience.
Q. Had the same experience? You had to lie over in Columbia?
A. Yes, sir.
Q. Have you observed that other people suffer this same inconvenience, and that there are quite a number of them? Have you observed that, seen it yourself?
A. Yes, sir.
Q. Is the number of people that are inconvenienced quite a number?
A. Yes, there is a good many; yes, sir.
Q. A party desiring to catch train 32 or 35, I believe Dillon is the only place it stops?
A. Yes.
Q. At Dillon what do they have to do?
A. You mean from Latta, or from where I live?
Q. From Latta, here?
A. They have to drive through the country.

Cross-examination.

By Mr. WILLCOX:

Q. How far do you live from Latta?
A. Four miles.
Q. How far do you live from Dillon?
A. About seven; possibly I can get there in six.
Q. Coming to Latta to take 32 and 35, if it stopped here, you would have to ride four miles?
A. Yes, sir.

Q. In going to Dillon to take 32 and 35 you have to drive six?
A. By going through the woods.
Q. Well, by going—you could do it?
A. Yes, sir.
Q. Did I understand you to say that your son couldn't leave Spartanburg and get here the same day?
58 A. No, sir, I didn't say that.
Q. Well, I misunderstood you. I just asked you if you did say that. He can do that?
A. He can get from Spartanburg here in a day, but you can't get from here to Spartanburg in a day.
Q. Do you happen to know that the Coast Line doesn't run any train from Columbia to Spartanburg?
A. Well, I know the shortest route is on the Southern from Columbia and I think the Coast Line has a road right around there somewhere; right near there.
Q. Did you go on the Southern?
A. I went on the Southern from Columbia to Spartanburg.
Q. And that is the connection you are complaining of?
A. Is Columbia.
Q. The Coast Line takes you to Columbia all right, then?
A. Yes, sir.

Redirect examination.

By Mr. Woods:

Q. Mr. Smith, have you had any experience about getting tickets to make an up-country connection to Clemson College? State what it is.
A. I did last Summer. There were several wanting to go from this place, but we couldn't get any tickets.
Q. Didn't have any tickets on sale here?
A. No, sir.

Objected to as irrelevant.

Q. You had to go to some other point to buy your tickets?
A. Well, we 'phoned to a friend in Dillon to buy the tickets for us and bring them down.

Objected to as irrelevant.

Q. So that he bought those tickets at the Dillon office and they were paid for there?
A. Yes, sir, and we paid him for the tickets after we got on the train.

59 D. J. Dew, called as a witness on behalf of the Plaintiffs, having first been duly sworn, was examined in chief by Mr. Woods, and testified as follows:

Q. Where is your home and what is your business?
A. I am a farmer; live out five miles above Latta.
Q. On what railroad?

A. Latta Branch.

Q. Mr. Dew, state what you know about the railroad connections?

A. Beyond Columbia?

Q. Well, for points going out of Latta?

A. I have tried to get to Clemson College, and I had to lie over in Columbia.

Q. Have any experience about getting tickets here?

Objected to as irrelevant.

A. Yes, sir. I tried to buy tickets here last summer to Clemson College and couldn't get them to this place at all. I had to phone over and have them sent over from Dillon—three.

Q. Who was in the crowd?

A. Mr. E. B. Watson, a neighbor of mine, was one, and J. F. Bethea, I think, was another. Furthermore, there was a gentleman below here about five miles, Mr. Reeves, come into the office at the same time, to buy the tickets, and in the presence of three or four the agent here informed us that he couldn't wire for the tickets himself and have them sent over and pay him the money but we would have to sign the tickets in person. Mr. Reeves said he couldn't go to Dillon and therefore would have to postpone his trip to Clemson College,—which he did.

Q. So the tickets were not on sale at Latta?

A. No, sir.

Q. Have you had any other ticket experiences?

A. Yes, sir, I have had a little to Conway this year. It
60 is said to be a seaside resort down there near Conway and other stations have reduced rates to Conway.

Q. Any on sale here at Latta?

A. None, sir. I tried to buy a ticket to Conway on the reduced rate and could not buy one any further than Chadbourn. He sold me three tickets to Chadbourn and couldn't, or didn't, sell one to Conway when I asked him for one to Conway.

Q. In going to the up-country is it possible to get any of the Columbia and up-country connections more than once a day from Latta?

A. Only once a day, sir; in the afternoon.

Q. What does that involve? What do you have to do?

A. You have to go to Columbia and lie over or go to Sumter and lie over and spend the night and go next day. The trains leave there on the Coast Line and the Southern about the same time.

Q. Would the stopping of these fast trains obviate that difficulty?

A. Yes, sir, unless a change of schedule has been made recently.

Q. Have you observed that there is a considerable amount of travel that is discommoded by the present arrangement?

A. To my personal knowledge there is quite a number sir. A good many more perhaps I don't know of.

Cross-examination.

By Mr. WILLCOX:

Q. The only difference between the up-country connections that you describe is the difference between leaving here at night, 7 o'clock in the afternoon, and leaving here at 3.30 in the morning?

A. Well, sir, it is a difference of time and difference of hotel accommodations in either Sumter or Columbia; about twelve hours, sir.

Q. Well, that is the difference?

A. Both of them, yes, sir.

61 Q. The difference?

A. Yes, sir.

Q. In other words, if you want to go to the up-country you can leave here at 7 o'clock in the afternoon and go through to Columbia, changing at Florence?

A. Change at Florence and go through to Columbia and pay a hotel bill and you can go at 7 o'clock next day or 12, sir.

Q. If you left at 3.30 in the morning, if that train would stop here, you would change at Sumter?

A. Yes, sir, and go through to the up-country by 3 o'clock in the afternoon, to most any point; the same day you left.

Q. On that same connection you would make at Columbia provided you left here at 7 in the afternoon?

A. Yes, sir, on the same connection.

W. W. SELLERS, Called as a witness on behalf of the Plaintiff, having first been duly sworn, was examined in chief by Mr. Woods and testified as follows:

Q. Mr. Sellers, what is your work?

A. Well, I am a State constable.

Q. Does your position give you a good opportunity to observe the traveling public?

A. Well, it does to some extent, sir.

Q. You are on and off the train a great deal, are you not?

A. Yes, sir.

Q. Is it your observation that a large number of people are discommoded by the present passenger accommodations at Latta?

Objected to as being leading and the application of a general result without the statement of fact.

62 Q. What is your observation, based on your knowledge?

A. I know if you want to leave here after this 7-o'clock train goes down in the evening, if you want to go by Florence anywhere you have to go to Dillon and take that fast train. I have done that myself, gone to Dillon and took the fast train and go to Sumter and connect on up, with the Columbia and as far as I wanted to go.

Q. That is your personal experience?

A. Yes, sir.

Q. Have you observed the experience of others, a very large number?

A. Well, anybody would have to do just like I do.

Q. Well, do a few have to do that or a large number?
A. Well, I think there is a good many people who have to do just like I do.
Q. And all people going to the up-country have to do what?
A. Leave here either on the 7-o'clock train or go to Dillon and catch that other train. Now, a man could lie over at Florence. He could go from here to Florence on the 4-o'clock train and stay until 8.05 and go on.
Q. Or he could go to Sumter or Columbia?
A. Yes sir, either one.
Q. And go to the up-country the same day?
A. Yes, he would get to the up-country the same day by doing that. The local train leaves Florence for the up-country at 8.05 in the morning.

Cross examination waived.

63 J. S. BETHEA, Called as a witness on behalf of the Plaintiffs, having first been duly sworn, was examined in chief by Mr. Woods and testified as follows:

Q. State in your own language what is your observation and experience about the matters under issue here, what positions you hold, and so on, and where do you live?
A. I live in the town of Latta. My business is kind of mixed. I am intendant of the town at present; president of the bank.
Q. State what your experience and observation is in reference to the passenger accommodations at this point?
A. Well, I don't consider them as good as we should have. They don't meet the demands of the people.

Objected to as an opinion of the witness.

A. Well, they are not then, I say.
Q. You observed that and state it of your own knowledge?
A. Yes, sir.
Q. State the facts, then, upon which your opinion is based?
A. Well, I will state we have a great many people here wanting to take that fast train and they have to go to Dillon. We have no way of getting out the evidence. I believe the evidence I can give has been brough out by other parties. I can only reiterate what has been stated. We have no way of getting to the up-country except by that evening train and we make no connection. We have got to stop somewhere—in Florence, Sumter or Columbia.
Q. Now, what about the line going through Sumter, Creston—from Florence, through Orangeburg, to Augusta?
A. Stay all night in Florence. I have had occasion to travel over that road once or twice in the last year. We have to wait for the fast train in Florence. There is only one train a day on that road.
64 Q. There is one train a day, and no connection from Latta for that train?
A. No, sir, none at all.

Q. Now, if this fast mail stopped here would passengers for points on that line get a connection?

A. Yes, sir.

Q. Go straight through, or not?

A. Yes, sir. The train from Florence for Augusta leaves after this fast train gets to Florence, the fast train over this road.

Q. Now, Mr. Bethea, state of your own knowledge as to the volume of travel here. What is your observation?

A. Well, the travel has increased considerably. We would have more from this point if we could get accommodations. A great many of our people have to go to Dillon that would board the train at this Place.

Q. Go to Dillon to catch what?

A. To catch that fast train. I don't know the numbers, don't keep up with the numbers.

Q. Do trains 32 and 35 do local work at Dillon?

A. They stop at Dillon.

Q. And take on and put off passengers?

A. Yes, sir.

Q. Is there a water tank at Dillon?

A. No, sir, I don't think.

Q. Is there a coal chute there?

A. Not to my knowledge.

Q. What about buying tickets here?

Objected to as irrelevant.

Q. What about buying tickets here? Have you had and experience and seen others have experience?

A. Yes, I have seen others and have had some myself. I tried to get a ticket here last winter beyond Florence and failed; couldn't get a ticket except to Florence,—local ticket.

Q. Do you know whether they keep mileage books on sale?

A. I don't know about that. I know you can't get a ticket to points on that road from Florence to Augusta.

65 Q. In going to the County-seat, what about you connections in going to and coming from the county-seat?

A. Well, we have to stay at Pee Dee down here about two hours in the morning.

Q. On that morning connection you have to stay at Pee Dee about two hours?

A. We take the Latta Branch here and go to Pee Dee, stay there about two hours and change to the Wilmington branch.

Q. Is it often you have to stay longer than that?

A. Oh, yes, sir.

Mr. WILLCOX: We object to that, because there is no complaint here about a failure to make a schedule.

Q. Coming back at night how long do you have to stay there?

A. Well, about the same time,—longer. I don't know. It seems to me it is about all night. That is a very disagreeable place to have to stop at down there. I don't know how long; quite a while.

Mr. WILLCOX: We object to the answer.

Q. But the only way you can get the connection from Marion to Wilmington is by stopping at Pee Dee?

A. Yes, sir.

Q. How many times a day can you go to Marion and how many times can you come away?

A. Once. Well, I don't know about the night connections. Twice in the day and night.

Cross-examination.

By Mr. WILLCOX:

Q. Would your conection with the county-seat, Marion courthouse, be improved by stopping 32 and 35 here—I mean the fast train at 3 o'clock?

A. With the county-seat?

Q. Yes?

A. I don't know that it would with the county-seat. I
66 don't know about the trains on that Wilmington branch, not exactly.

Q. If you would go to Pee Dee on the train that leaves here at 3 or 3.30 in the morning and wait there until 10 next morning to go to Marion, South Carolina, do you think that would improve the service to Marion?

A. How is that question?

Q. If you left here at 3 o'clock in the morning and waited at Pee Dee until 9 or ten next morning to go to Marion, would that be an improvement over the Latta Branch train that goes to Marion?

A. I don't think the Latta people want the train to stop for that connection.

Q. Would the service be improved between here and Marion by stopping 32 and 35 at this point?

A. I don't know that it would. I have answered that once.

Redirect examination.

By Mr. WOODS:

Q. Mr. Bethea, if a party leaving Marion in the afternoon—you say they have to wait down at Pee Dee nearly all night—wouldn't they be convenienced by being enabled to run into Florence and come on here on 32, get supper there?

A. They would coming this way, yes, sir; from Marion.

Recross-examination.

By Mr. WILLCOX:

Q. Can't you leave Marion in the afternoon and have the glorious privilege of riding to Florence and getting supper and then leaving Florence and coming on to Latta on the Latta Branch train?

A. Yes, sir, you can do that on the Latta Branch. You have the preference between lying over at Pee Dee instead of going to Florence.

67 Redirect examination.

By Mr. WOODS:

Q. Suppose you do desire the glorious privilege of running into Florence, can you get a ticket to Latta for the same price as if you wanted your supper?

A. No, sir, I would have to pay for it.

Q. How many miles is it from Pee Dee to Florence, do you know?

A. Not exactly; about 15 miles, I think.

Q. So you would have to pay for that extra in addition to your supper?

A. Yes, sir.

By Mr. WILLCOX:

Q. Would you not have to travel the same number of miles and pay the same mileage to ride to Florence on 32?

A. If I was to go from Marion to Florence?

Q. Yes?

A. Yes, sir.

Mr. WOODS:

Q. Wouldn't riding from Florence to Latta on train 32 save you making a transfer at Pee Dee and wouldn't it be a more comfortable train?

A. Yes, sir.

D. McK. BRADDY, called as a witness on behalf of the Plaintiffs, having first been duly sworn, was examined in chief by Mr. Woods and testified as follows:

Q. Where is your residence, and what is your business?

A. I am farming. My residence is here in this town.

Q. Mr. Braddy, state from a personal standpoint and from your observation whether the passenger accommodations at this point are sufficient?

Mr. WILLCOX: We object to his opinion.

Q. State what you have observed and what you know.

A. I don't think they are sufficient to take the travel as the people would like; because there are a great many people come here from up the road here, the Latta Branch. They have to go to Florence to get on the fast train going north. I was up at Clio some
68 time ago and there was a gentleman said he had to go north and would have to go to Florence to take the fast train; costs him more. He goes to Florence and then comes right back here—two dollars short—to get on the road, to go where he wants to go. That's the first thing he does—to throw away two dollars. If you are going south, coming from that point or leaving here, you have got to go to Dillon to take the fast train to make the connection to go where you have started. A man don't want to be honeyfuggled along on the railroad, you know,—waiting for trains; he wants to go through when he has got business. We people here are like the

people where you live, you know (addressing representatives of defendant railroad company); we like to be at the starting point and go through.

Q. Where did you formerly live?

A. I lived four miles above Little Rock on the Bennettsville road; well, it is the McCall road, leading to Dillion, Clio. There I noticed frequently people passing on the road from those three points to go to Dillon to take the fast train to go north; those mill men there, for instance, and some from Clio; driving through the country, 25 miles, to take the fast train. I knew the parties, stopped them there at my house, and I asked them why they didn't go to Clio and take the train there. "Well, we would, but it don't stop there; we have to drive further to take the fast train." Numbers of times I have seen that, last year and before. And it is very frequently the case here where they come in on that road and go to Florence to take the fast train going north, or go to Dillon.

Q. You say that is frequent?

A. Yes,—well, I heard a gentleman say on the train coming up the other day that he knew it was frequently the case.

69 There was a gentleman here that lived in this town all the year that went to Norfolk the other day. He had to go to Florence to strike the fast train, with his family.

Mr. WILLCOX: We object to the entire answer of the witness as not responsive to the question, which we have already objected to as irrelevant. We now object to the answer as irrelevant, and will ask that it be stricken out. In addition, we object on the ground that it is based upon hearsay.

Q. Has any one connected with the railroad, in answer to a question, told you anything about the volume of travel from that country to go on this train?

Mr. WILLCOX: We object to that.

A. Yes, he said it was very frequent.

Q. Who was it?

A. Captain Fitts, the conductor on the Latta Branch road.

Objected to as being entirely hearsay.

A. We were speaking casually along and he just mentioned it, about a gentleman going to Florence to take the fast train; he said he hated to do anything like that, throw that much money away, but that was his only chance. I asked him, "Isn't that the case right frequently?" He said yes, often the case. That was the conductor on your road. I just asked him the question in such a way he couldn't say no. He had to say what was the facts.

Mr. WILLCOX: Having objected to the question, we will object to the answer and ask that it be stricken out, as entirely hearsay and an undertaking to introduce the testimony of an alleged agent of the principal without proving the agency or any authority within the scope of his agency to make any such statement.

70 Q. What position does Capt. Fitts hold?
A. He is conductor on this Latta Branch road.
Q. And what road does that belong to?
A. Belongs to the Atlantic Coast Line.
Q. How long has he been conductor to your own knowledge?
A. I couldn't tell you; I suppose eight or ten years, anyhow, if not longer.
Q. Has he received your money and acted as conductor on that train?
A. Yes, sir.
Q. Then you know that he is an employé of the company?
A. I do.

Cross-examination waived.

E. B. BERRY, called as a witness on behalf of the Plaintiffs, having first been duly sworn, was examined in chief by Mr. Woods and testified as follows:
Q. State your residence and occupation?
A. I am in Latta a good part of the time, sir. My residence I suppose is about five miles out in the country. My business, mainly, is in Latta.
Q. You stay in Latta a good part of the time, don't you?
A. Yes, sir.
Q. State of your own knowledge your personal experience and what you of your own knowledge know is the experience of the public about these two trains?
A. Well, of my own experience, I attempted some time ago in taking a trip to south Florida to get a mileage book at this office. The agent here promised to wire to Wilmington for one. I failed to get the mileage book and had to pay local fare over to Florence, and there bought the mileage book.
Q. Mr. Berry, are mileage books as a matter of fact on sale at this office? Have you or your friends ever been able to obtain them?
A. No, sir, and we have applied for them more than
71 once.
Q. What about coupon tickets?
A. I could only answer that from hearsay.
Q. Now, Mr. Berry, state about the connections going to different points in the State. You know it just as well as I could bring it out with questions, and your observation as to the amount of travel that would be accommodated by these two trains?
A. There is a good deal of travel would go from this place if we could get tickets to board these fast trains.
Q. Is it not a fact that there is a great deal of demand for that now? Do you see parties frequently going into Florence and Dillon?
A. Yes, sir, and traveling men, especially, very often make personal complaints to me.
Q. All right, sir. State anything you know of your own knowledge.
A. I know since this fight has been on between the people and

the Coast Line company a good many traveling men have expressed to me their hope that we would win, in order for them to reach Latta without going to other points and spending the night and coming back; many a time taking a drive through the country to come from Dillon over to Latta; loss of time and expense of hotel bills.

Q. Parties getting off of train 35 at Dillon, then, would have to stay there how long?

A. They would have to spend the night at Dillon or drive over during the night, as some do do, or they would have to pay their hotel bills and come down on the Latta Branch train next morning.

72 Q. State what would be the experience of a person for a train below Charleston to get into Latta? There is a local, as I understand, from Charleston to Florence you can come to Latta on; how about below Charleston—Beaufort and Barnwell and towns down in there?

A. I couldn't answer that of my own knowledge.

Q. Well, points on the Charleston road?

A. We would get into Florence and then we could take the Wilmington train to Pee Dee and there take the Latta Branch train to Latta.

Q. But will they sell you a ticket to Latta?

A. No, sir.

Q. State what has been the experience of people buying tickets into Latta, if you know, if you have had any experience in that line, or seen it?

A. Well, I knew what would be the result and therefore I didn't ask for one. I have had other parties to tell me they couldn't buy them.

Mr. WILLCOX: We object to that.

WITNESS: I supposed that. I didn't know of my own knowledge. I would like to say this: that we only have two trains a day from Latta that offer anything like decent accommodations as far as the appointments of the coaches we have to ride in are concerned. We can only take the 10.38 train going north or the 6.58 train going south. Outside of that, we have to go on the Latta Branch train—which I think any decent man would object to riding on.

Q. State the conditions on that train as to water and seats and so on.

A. The seats are very rough and you board it at night at Pee Dee and I have gotten on there when I could scarcely see my way to find a seat. It is pretty much Mr. Bethea's idea, as I caught it, of a caboose.

73 Q. So this train that runs backwards and forwards so much has very poor accommodations?

A. Yes, sir, very poor; and especially at Pee Dee, where we have to board it at night.

Q. Is it a very uncomfortable train?

A. It would be if you had to ride any distance, and it is not

comfortable any distance; especially so when you have just gotten off a good train a few minutes before; the contrast is very unpleasant.

Q. Anything else that suggests itself to you?

A. No, sir. I would say that this connection from here to Marion, which I understand is altogether local accomodations—that is what we are driving at; the connection between here and Marion is most miserable now. In fact, very few of our people go to Marion now, for the reason that they can drive to Marion in about the same length of time they would have to lie over at Pee Dee. Very few people now take the train to Marion, and all took the train before this present schedule was given. And this present schedule was given us as a kind of compromise when we first began to agitate this matter of stopping the fast train. So if there were no fast trains I suppose we would have the same connection to the county-seat we had before.

Q. The accommodations would be the same, 32 and 35 wouldn't make any difference as far as going to Wilmington is concerned?

A. No, sir.

Q. Would it make any difference on the Charleston line? Would it accommodate passengers going from here to Charleston any more, give them additonal accommodations?

A. No, sir, I can't say that it would.

74 Q. Where does train 35 go? Does it go through Charleston? Have you ever ridden on it?

A. Yes, sir, it goes, I believe, as far as the junction.

Q. Doesn't it go into the station in Charlesion?

A. Yes, sir.

Q. Then would it not give another train to Charleston a day?

A. You mean if the schedule of the Latta Branch——

Q. No, sir, if train 32 and train 35 stopped here?

A. Oh, yes, sir; yes, sir.

Q. And has your observation been that the travel between here and Charleston is light or heavy? Do many people go?

A. Well, the business is very heavy, especially at some seasons of the year; and for traveling men it is quite a thoroughfare.

Q. It would give another train into Charleston, then?

A. Yes, sir.

Mr. WILLCOX: I didn't care to interrupt Mr. Berry; I wish to state some objections. I wish to object to the questions to and the answers of Mr. Berry in the following particulars: As to the matter of purchase of tickets at Latta, which we regard as irrevelant; to the hearsay testimony or secondary evidence as given by Mr. Berry; as to the insufficiency of the equipment of the accommodations on the Latta Branch, which we regard irrelevant as to any issue before the Court; and as to the Marion connection.

Cross-examination:

Q. The train that passes here at 7 o'clock in the afternoon goes through to Charleston also, doesn't it?

A. Yes, sir.

Q. Pullman on that train?

A. Yes, sir.

75 Q. Stopping 35 at Latta would simply give you an additional train to Charleston, would it not?

A. Yes, sir, give an additional train.

Q. It would simply mean that passengers instead of leaving here at 7 in the afternoon to go to Charleston could have the additional privilege of getting up at 3 o'clock and taking the train for Charleston?

A. Yes, sir, for the Charleston connection I think that is true.

Q. In addition to that he can leave in the morning on the Latta Branch and make the Charleston connection?

A. Yes, sir.

J. L. Dew, called as a witness on behalf of the Plaintiffs, having first been duly sworn, was examined in chief by Mr. Woods and testified as follows:

Q. State your residence and your business.

A. Well, I live here, in this town, and I have a store and mill business and a farm and I am postmaster here. That about covers my occupations.

Q. Now state what experience you have had with reference to buying tickets.

A. I have had considerable trouble buying tickets. I wanted to go to Washington—I don't know exactly the time—and I tried to get a ticket here. The rates were advertized to Washington and return at, I think, ten dollars from all points in the eastern part of South Carolina, and I went to the agent and tried to get a ticket and he said he didn't have any, and I took my wife and went over to Dillon and paid my fare over there and took a receipt from the conductor and went to Dillon and bought tickets there and went on to Washington. And coming on home I paid my fare from Dillon and took a receipt for it.

76 Q. Do you know whether mileage books are on sale here?

A. I don't know, sir; one time I tried to get a mileage book here and I gave them notice for two weeks in advance and couldn't do it, and I went to Florence and got it; and I told the agent here I thought it was justice to me to let me take the mileage out of my book there, and he agreed to it and the conductor agreed to it, and after I bought it at Florence I tore out the mileage and paid the conductor.

Q. But, as a matter of fact, your purchase went to the credit of the Florence office?

A. Yes, sir.

Q. You had to buy your tickets at the other points?

A. Yes, sir.

Q. State any experience you had and know of your own knowledge about Columbia connections?

A. I wanted to go up to Chick Springs the other day and sent my wife up there and my sister and we had to go over to Columbia and stay there all night when if we could have left here on 35 we could have gone to Columbia and made close connection and gone on.

Q. Gone in the same day?

A. Yes, sir.

Q. What about the Augusta line, the line going through Orangeburg?

A. I haven't traveled over that line in two or three years. I don't know much about that connection over there.

Q. State whether it is a fact that you tried to get a ticket validated in Charleston to come to Florence on 32 and could not at Charleston?

A. I can give you the facts of that case, and let you consider it. I wanted to go to Jacksonville and I bought a return ticket to Charleston and the Charleston ticket, I think, was a ten-day ticket and I went to the agent in Charleston and said to him, "I want to
77 go to Jacksonville and I can't possibly meet my connection only by 32 from Jacksonville to this point and my ticket goes to Latta and I want you to validate this ticket as far as Florence." And he refused to do it. I had to pay from Charleston to Florence.

Q. In other words, a passenger in Charleston if he happens to miss this slow train can't get out on 32, which leaves about an hour and a half later, I believe?

A. No, sir, not if he has got a ticket for Latta. He can't get it validated, or have his ticket made good. Or he refused to validate my ticket.

Q. So if a person misses train No. 50—which is the Wilmington train—happens to get to the station late in Charleston, he either has to pay his fare to Florence, local fare to Florence, or lie over in Charleston until next night?

A. Well, in this case that was the last day of my ticket. You see I could have stayed over in Charleston and come out on another train, but the trouble with me was that was the last day of my ticket. I still have my ticket; I still hold that ticket. I went to the railroad ticket agent at Wilmington and asked him to redeem it, told him the circumstances, and he refused to do it. Then I asked him to redeem the receipts. I told him he had tickets advertized to Washington, good for any point east of Columbia, at ten dollars and return, and I said, "Now I went to the ticket agent at Latta and I couldn't do it and I had to pay my fare to Dillon and back and here is my receipts." I have those receipts right now. And I tried to get him to redeem those and he refused to do that. I think I have about six or seven receipts of that kind.

78 Mr. WILLCOX: Please note our objection to the questions to and answers of Mr. Dew, in that they refer to the purchase of tickets to and from Latta, which we regard irrelevant.

Q. State about any sickness in your family and an attempt to get put off here.

A. I was in Chattanooga and I notified Mr. Emerson in Wilmington—that has been about three years ago, I think; I don't remember the date—that I would leave Savannah at a certain time on 32 and I had a ticket for Latta, too, direct from Lexington, Kentucky, and I asked permission to have 32 put me off at Florence and to notify Mr. Heard at Florence whether he would do so. And when I went to Mr. Heard at Florence Mr. Heard said he was very sorry but he

had a letter there for me and I took the letter and Mr. Emerson said he was very sorry but he could not accommodate me.

Q. There was sickness in your family at the time?

A. Yes, sir, and I had a ticket for Latta and I got on the train and come on; I had the courtesy of the company to put me off.

Q. He did put you off.

A. Yes, sir. They threatened to put me off at Fayetteville, and Pee Dee, and I told them to put me off where they pleased—and they brought me on here.

Q. Anything further?

A. I was in Covington, Kentucky, and I came by the way of Richmond and struck train 35 at Richmond. I had been off several weeks from home and in passing by here I come by my own door and they carried me over to Florence and I had to pay my way to Florence and come back next day. If train 35 had stopped it would have saved me a hotel bill and railroad fare, too, to Florence and back.

79 Mr. WILLCOX: We object to this last testimony on the same ground as to former testimony of witness.

E. B. BERRY, recalled for Plaintiffs, was examined by Mr. Woods and testified as follows:

Q. Mr. Berry, it seems to be a fact that there are some ten or twelve trains that stop here for passengers a day, including two freight trains. I would be glad for you to explain the accommodation that those trains afford.

A. Well, sir, as we see it here, we have only two passenger trains a day which stop here—one going north, and one south. It is true the Latta Branch train stops here, with very poor equipment. Some of those trains mentioned on the stand this morning are simply local freight trains.

Q. Do they have any certain time to come to Latta?

A. No, sir. I remember on one occasion chasing one up and down there, expecting it to leave, for quite a number of times; and the time it did leave I didn't think it was going, and so I didn't get off at all. So, as we regard it, we have only two passenger trains stopping at this place daily.

Q. That is, one each way?

A. Yes, sir.

Q. Describe the kind of coach that is furnished for the accommodation of passengers on this Latta train and the freight trains.

A. Well, sir, we have in there very poor seats. They seem to be that—needing repair. And I think they used to have a rusty tin cup to drink water from, and the passenger department has a very delapidated appearance generally. In fact, I never see anything like this coach at all on the main-line. When I say "on the main-line," I mean I never see it attached to trains that are doing a regu-

80 lar passenger business.

Q. What about the coaches on the freight trains—Mr. Bethea called them "cabooses"?

A. I think they are what we all call a caboose.

Q. Describe what sort of coach it is and what sort of accommodations are on it.

A. The one I rode on from Dillon down here some time ago was an open car with a stove in one end of it—two or three broken chairs. I remember sitting in one between two doors as they opened like an ordinary horse car.

Q. You mean the doors opened on the sides like a baggage car?

A. Yes, sir, and I sat in between to get the breeze—like I would in a chair over here.

Q. Any accommodations for water—light—windows in it?

A. I don't remember distinctly. This was in the daytime when I came over the road. That, I suppose, is one of these passenger trains that were spoken of this morning.

Q. On these particular trains that were carrying passengers were there separate accommodations for white people and colored people, or only one coach?

A. Only one coach that I saw; I didn't see any separate apartments.

Q. How about the Latta Branch, are there separate apartments furnished for whites and blacks?

A. Yes, sir.

Mr. WILLCOX: We enter the same objection to the testimony as to the equipment of the Latta Branch—because not involved in the controversy.

W. W. GEORGE, called as a witness on behalf of the Plaintiffs, having first been duly sworn was examined in chief by Mr. Woods and testified as follows:

Q. Where is your residence and what is your occupation?

A. Latta is my place of business.

81 Q. What business are you engaged in?

A. Hotel and general merchandise and wholesale grocery.

Q. As keeper of the hotel do you come intimately in contact with the traveling public?

A. Well, I do with a majority of the traveling public.

Q. You see a great deal of it, do you not—that is, the traveling public? You see a great deal of the traveling public?

A. Yes, that comes to Latta; I mean the majority of the traveling public that comes to Latta.

Q. What do you say from your own experience and your own knowledge as to the accommodations furnished here? What do you say as to the passenger accommodations at Latta?

A. It is very poor.

Q. Are sufficient accommodations furnished, and if not, why not?

A. It is not.

Q. Why do you say that?

A. Because we have lots of patronage here that we have to send to Dillon to meet that fast train. I send a man or two every week to meet that 9 o'clock train—send them [illegible]re. I have a horse and buggy and they stop over here and get me to send them from

here to Dillon. Then I hear lots of complaint about their wanting to get off here and can't get off. We have men to get off at Dillon and take the Latta Branch and come down here.

Q. Then there is among the traveling public very general complaint because there is not a double-daily schedule?

A. Yes, sir.

Q. Would the cause of the complaints you have heard be removed if 32 and 35 stopped here?

—. It would.

Mr. WILLCOX: We object to the questions and the answers of the witness in his undertaking to express an opinion not based upon facts.

82 W. G. PACE, called as a witness on behalf of the Plaintiffs, having first been duly sworn, was examined in chief by Mr. Woods and testified as follows:

Q. What is your place of residence and occupation?

A. I claim Danville, Va., as my home, sir.

Q. Where are you now residing?

A. I stay in Latta in the tobacco business.

Q. You have been residing here several years, have you not?

A. Yes, sir.

Q. And you are in the tobacco business?

A. Yes, sir.

Q. Mr. Pace, is it the fact that there is a great deal of travel from one point to another among the tobacco men?

A. Among the head men, yes, sir.

Q. Is it a fact that the tobacco industry is very much hampered by not having double-daily passenger service here?

Objected to as leading.

Q. What is your view about that?

A. Well, I think, for instance, Mr. Hickey would come here oftener if he could use this fast train.

Q. Who is Mr. Hickey?

A. He is my superior.

Mr. WILLCOX: Objected to as being entirely a matter of opinion, inasmuch as the witness "thinks" Mr. Hickey would give better attention to his business if he could come here oftener.

WITNESS: As a matter of fact, when he does come I always have to carry him over to Dillon, as he invariably uses that train. I have never heard Mr. Hickey say that himself, but I just suppose that to be the fact.

Mr. WILLCOX: Therefore I submit that the witness knows nothing about it; it is simply his opinion.

Q. Of your own knowledge state what is your observation as to the passenger accommodations, and whether you have heard many complaints, and your own experience?

83 A. Well, my own experience in coming from Danville here, and not only myself, but my family, we have had to

go to Dillon, when if that train had stopped here it would have been very much more convenient. I came very near going in the ditch there in going for a young lady. She had a ticket from Danville here, and the conductor put her off at Dillon—and it was in the night, and raining.

Q. Have you heard much complaint as to the passenger accommodations?

A. Yes, sir.

Q. Would the cause of that complaint be removed if these two trains stopped at Latta?

A. I think so; certainly.

Mr. WILLCOX: We object to the opinion of the witness. We object to his stating that a cause of complaint would be removed, without stating the facts to base it upon.

Cross-examination:

By Mr. WILLCOX:

Q. What time do you leave Danville to come to Latta, South Carolina?

A. Well, the most pleasant time to leave would be between—I don't remember the exact time, about 10.45, I think, so as to catch this train out of Greensboro down by Sanford that connects at Fayetteville.

Q. With what train?

A. I don't know the number of the train.

Q. What time does it get here?

A. Would connect with 39, but if that train from Greensboro is twenty minutes late, or, certainly, half an hour late, they invariably miss this train if it is on time.

Q. Therefore, your most pleasant route from Danville is to leave at ten, in the neighborhood of ten, and connect at Fayetteville with 39?

A. Yes, sir—connect at Greensboro first.

Q. Well—Connect at Fayetteville?

A. Yes, sir.

Q. And the only inconvenience you are subjected to is that
84 that train may be late?

A. Frequently, yes, sir.

Q. That is the only inconvenience you are subjected to?

A. Yes, and 39 will never wait for it, is my experience.

Q. That is the most pleasant route?

A. Coming from Danville, yes, sir.

Q. And the best connection, and your best trip to Latta?

A. Yes, sir.

Redirect examination.

By Mr. WOODS:

Q. To whom does the line from Sanford to Fayetteville belong? What system is that?

A. Coast Line, I think.

Q. So the Coast Line does not wait on its own train, and you frequently miss that connection?

A. About 6 times out of 7.

Q. You say, Mr. Pace, that that connection is missed at Sanford right often?

A. At Fayetteville.

Q. You don't know how often?

A. Well, my wife, my family, have come down here, made three trips to Danville this year, and we have had a relative, the young lady I spoke of meeting in Dillon—that is only four trips from Danville this year, and they missed each time. That is a bigger percentage than six out of seven.

Recross examination.

(By Mr. WILLCOX:)

Q. Do you mean to say as a fact that that train from Sanford to Fayetteville misses the 39 connection six times out of seven?

A. That has been my experience, sir; yes, sir.

Q. Covering what period?

A. I have missed it frequently in the last three or four years, but every time since January the first.

Q. But kindly answer my question. I asked you if it had been your experience that it missed it six times out of seven?

A. Every time I travel it.

85 Q. Then, you don't mean to state that—that it misses it six times out of seven?

A. Oh, comparatively. I meant comparatively.

Q. How many times did you make that trip?

A. Oh, I haven't been up there so frequently myself, but my family have come down here four times since January the first.

Q. How many times has the train missed the connection?

A. Each time.

Q. Could you give the dates, by any reference?

A. Well, I might get it for you.

Q. I wish you would look it up a little later—not today, but a little later.

A. Yes.

Q. And tell me the four days you undertook to come here and that train missed connection.

A. One time I remember being on myself, with my mother and my wife, in January.

Q. What train did your people come in?

A. On this fast train; got off at Dillon—snow and ice; went to the hotel and waited until next morning; had to build my own fire.

Q. So you think if Mr. Hickey could come on that train 35 he would come down here oftener?

A. Oh, yes; he has told me so once or twice.

Q. You think his business here is not of sufficient importance for him to come himself unless he can come on that train?

A. Well, he either comes here or comes to Florence. Of course personally I would rather for him to come here.

Q. So, by reason of the inconvenience, you go to Florence?

A. Yes, and when he does come here I have to take him to Dillon every time to get that train.

Q. Do you mean to state that by reason of the fact of
86 your going to Florence he can't come to Latta?

A. I think he would naturally come here as much as before; naturally would.

Q. Why doesn't he come on 39?

A. He usually comes this way.

Q. Why doesn't he come on 40?

A. He does when he does come—has to.

Q. Doesn't that give him sufficient time to attend to his business?

A. Yes, but some times he could double up his trip. Frequently he gets off at Dillon, you know, and comes here, and instead of staying here, if he is going back north, he has to be driven to Dillon.

Q. When he goes to Dillon can't he drive to Latta?

A. Oh, yes.

Q. Can't he come on the other train, the train that stops at Latta, from Dillon?

A. What? 39?

Q. Any train?

A. Oh, yes; he could; but I am speaking of the convenience of it.

Q. So he simply prefers to get off here at 3 o'clock in the morning?

A. I am speaking of the train going north.

Q. Can't he come up from Florence on the Latta Branch?

A. Never has.

Q. Couldn't he do so?

A. Yes.

Q. But still he has a preference for the other train?

A. Yes, he usually travels on that.

Q. In other words, he has simply a fondness for that train?

A. Yes, sir.

Q. And doesn't care to ride on the Latta Branch train? Is that the idea?

A. Yes, I suppose so; he never does.

87 J. S. BETHEA, recalled for the plaintiffs, testified as follows:

(By Mr. WOODS:)

Q. Have you ever had any experience with that Fayetteville connection we were talking about?

A. My wife——

Objected to as irrelevant and also as hearsay.

A. This is to my knowledge a fact. My wife missed connection there last week and my sister the week before.

Q. That is on the train from Sanford to Fayetteville?

A. Yes, sir.

Cross-examination.

(By Mr. WILLCOX:)

Q. Where was your wife delayed?
A. Fayetteville.
Q. Where was the train first delayed?
A. I don't know about that. She was at Mt. Vernon. She was on her way home. She got to Fayetteville too late for that train and had to stay there.
Q. Do you know whether the train was delayed in the beginning?
A. No, sir, I don't know that.
Q. Don't you know that the train was delayed up on the Southern railroad somewhere?
A. No, sir, I don't know that.
Q. Do you mean to say that between Sanford and Fayetteville the train lost time?
A. I don't know that.
Q. The only thing you do know is that the train did not make that connection at Fayetteville?
A. That is all.
Q. And you don't know the reason of that?
A. No, sir.
Q. What date was that?
A. That was about last Thursday was a week ago. I don't recollect the day of the month; about the 12th or 13th, wasn't it?
Q. You are sure it was last Thursday——
A. No, this past Thursday. I am thinking about the other case—of my sister. That was the week before.

88 M. H. GARRETT, called as a witness on behalf of the plaintiffs, having first been duly sworn, was examined in chief by Mr. Woods and testified as follows:

Q. Mr. Garrett, in what business are you engaged, and where?
A. I am in the warehouse business, at Latta.
Q. What sort of warehouse?
A. Tobacco warehouse.
Q. State, Mr. Garrett, whether in your opinion there are sufficient passenger accommodations furnished the citizens of Latta—that is, what you have personally experienced and have observed from the experience of others, and if you don't think sufficient accommodations are furnished, why not?

Objected to as a matter of opinion, not based upon any statement of fact.

A. No, sir, I don't think we have sufficient accommodations.
Q. Why?
A. For the lack of more passenger trains, or more trains to stop.
Q. Have you ever been inconvenienced personally by not having this double-daily service?
A. Not recently.

Q. Have you ever been?
A. Yes, sir.

Mr. WILLCOX: We object to any statement of personal inconvenience, as irrelevant to the facts.

Q. State how that inconvenience arose?
A. I could not make my connections and would have to wait for another train.
Q. Couldn't get your connections?
A. No, sir.
Q. What has been your observation—that is, not what you have heard, but what you have observed yourself and know of your own knowledge—as to the inconvenience to others?
A. Well, sir, my observation is they are right much inconvenienced.
89 Q. Is your observation that there is a considerable amount of travel for those two trains from here?
A. Yes, sir.

Mr. WILLCOX: We object to the opinion given by the witness, not based upon statement of fact, and that the question and answer is irrelevant.

Cross-examination.

(By Mr. WILLCOX:)

Q. What two trains?
A. These fast trains; I don't know the numbers. One passes here at night somewhere not far from 9 o'clock.
Q. What do you mean by people being inconvenienced by not being able to go on those trains?
A. They have to pay extra fare to ride down to Florence and ride back here, or hire a conveyance to go to Dillon.
Q. How many people are inconvenienced a week?
A. I don't know, sir; a right good many.
Q. You wouldn't undertake to say there are a good many?
A. Yes, sir, I would.
Q. Would you undertake to say there are two a week?
A. Yes, sir.
Q. Ten?
A. I don't know. There is some difference between two and ten.
Q. Eight?
A. I don't know.
Q. Six?
A. I don't know.
Q. Four?
A. I think so.
Q. You are willing to fasten your mind that there are as many as four?
A. I am satisfied there are that many.
Q. Why are you satisfied there are a certain number—four?

A. I didn't say I was certain there were just four; I say I am satisfied there are that many.
Q. Why?
A. From hearing people talking.
Q. Then, from hearsay?
A. Yes, sir.
Q. Without any particular fact?
90 A. Yes, sir, I don't think people would talk unless they had some reason for it.
Q. You don't think people find fault unless they are justified in doing so?
A. Oh, yes, sir; I am aware that they do.
Q. Your opinion is not based on any certain knowledge—just pure hearsay?
A. Just what I hear them say.
Q. Just pure hearsay?
A. Yes, sir.

J. E. HENRY, called as a witness on behalf of the plaintiffs, having first been duly sworn, was examined in chief by Mr. Woods and testified as follows:

Q. Where is your place of residence, and in what business are you engaged?
A. Latta is my place of residence and I am in the live-stock business.
Q. State of your own knowledge whether a great many people come to you to hire teams to catch these two fast trains at this point, whether people are hunting for teams?
A. Well, yes, sir, I have a good many calls for teams.
Q. For the purpose of catching trains 32 and 35 at Dillon?
A. Well, I don't know them by number. This fast train going north at 9 o'clock——
Q. The two fast trains we are talking about?
A. Yes, sir.
Q. That fast train passes what time in the morning?
A. I suppose about half past two or three o'clock, sir.
Q. Then from your own knowledge and from people coming to you to hire teams would you or not say that a great many people are inconvenienced by the failure of these trains to stop?
A. Yes, sir, some are, I know. I couldn't say how many, but there is hardly a week but what I have as much as one or two calls for teams to go to Dillon.
91 Q. Are you engaged regularly in the livery business?
A. Not in the livery business at all—but I am called on.
Q. Is there a stable in the town engaged in the regular livery business?
A. Yes, sir, two.
Q. Two stables besides your own? And they come to you to get teams?
A. Yes, sir, I have been called on very often for teams, and I have been put to a good deal of inconvenience myself.

Q. Tell about it.

A. I have gone to buy stock several times since the first of September, to Norfolk and Richmond and Atlanta, and I have to drive over to Dillon to catch one of those trains.

Q. You can't get your connections without going on those trains?

A. No, sir; and coming back from the north I have to stop over at Dillon in the morning before day and wait for the Latta Branch train to come down.

Mr. WILLCOX: We object to the testimony of this witness as hearsay and as an expression of opinion not based upon a statement of fact.

Cross-examination.

(By Mr. WILLCOX:)

Q. Number 40 makes connections for Norfolk, doesn't it—the train in the morning, passing here about ten o'clock in the day, or eleven?

A. Yes, sir, I think so.

Q. Makes connection for Norfolk and Richmond, through train for Richmond?

A. Yes, sir.

Q. Do all the people who hire teams to go to Dillon inform you of the object of their trip to Dillon?

A. No, sir, not always, but some of them do.

Q. In going to Dillon it is always that they desire to take the fast train?

A. No, sir, not always.

Q. The only thing you know is that several days out of a week you hire teams——

92 A. No, sir, I don't hire teams at all. I don't do any livery business. I am only called on for them, but I don't furnish them.

Q. So, two or three times a week you are called on for teams?

A. Yes, sir.

Q. Isn't it a fact that very frequently traveling men work two towns in one day—Dillon and Latta—so near together?

A. I suppose, so; yes, sir.

Redirect examination.

(Mr. WOODS:)

Q. Mr. Henry, Mr. Willcox made it appear you thought you got the Norfolk and Richmond connections by taking train No. 40. If you take train No. 39 coming out of here in the afternoon do you get the connection for out on the Augusta branch, that is, the road running south of Florence, running through that way? Do you get that connection?

A. I don't know any of these trains by number.

Q. I mean the train passing here at 6.58 in the afternoon?

A. No, sir, you have to stop at Florence until 3.45 the next morn-

ing. And I have made the trip from here to Dillon several times when the roads were almost impassable with a buggy.

Q. To make that connection and catch that southbound train?

A. Yes, sir.

Mr. WILLCOX: We object to the impassibility of the roads where it was the duty of the County to keep them up.

E. T. MCCUTCHEN, called as a witness on behalf of the plaintiffs, was examined in chief by Mr.. Woods and testified as follows; having first been duly sworn:

Q. State your place of residence and business.

A. Well, we live here and do a livery business.

93 Q. Are you in partnership with any one?

A. Yes, with my father.

Q. State whether in your opinion sufficient passenger accommodations are furnished the people of Latta, and if you say not, why not,—your reasons?

A. Well, I don't think so for the simple reason in a good many cases we have to carry people to Dillon to meet 32, going north, at night.

Q. Do you have to go over to Dillon to meet people coming on 35?

A. Well, I have once or twice.

Q. Now, Mr. McCutchen, is it quite often, or just occasionally, or seldom, that people come to your place for teams to catch these through trains?

A. Yes, a good many people come there, and a great many of them we have to turn away, I can't accommodate them.

Q. You haven't sufficient teams to accommodate them?

A. Yes, several times I could not accommodate them; more than half a dozen times.

Q. Was that due to the fact that you did not have the teams, or the teams were all out?

A. Well, it was due to the fact that the teams were out.

Cross-examination.

(By Mr. WILLCOX:)

Q. You say once or twice you have had to meet 35 at Dillon?

A. Yes, sir.

Q. Well, once, or twice?

A. Yes, sir.

Q. Which?

A. Twice, I think; I am not positive.

Q. Within what time?

A. Well, within the last twelve months.

Q. Within twelve months some passenger wanted to get off at Dillon and come to Latta and you had to furnish the team?

A. Yes, sir.

Q. Did you ever live at Lake City?

A. Yes, sir.

94 Q. Which is the larger, Lake City or Latta?

A. Well, I think Lake City is the larger; very little, if any, though.

Q. Does 32 stop at Lake City?

A. I can't say.

Q. What is your recollection?

A. They didn't when we were there.

Q. Are you acquainted with the county-seat, known as Kingstree?

A. Yes, sir.

Q. How much larger is that than Latta?

A. Kingstree is very little larger than Latta.

Q. Larger, though?

A. Well, it may be a little.

Q. Larger than Lake City?

A. No, sir, I don't think.

Q. Kingstree is not larger than Lake City? Do trains 32 and 35 stop at Kingstree?

A. I can't say; I don't know.

Q. When you stayed in that section of country?

A. I don't know that.

Redirect examination.

(By Mr. Woods:)

Q. Do 32 and 35 stop at any point between Charleston and Florence for the taking on and letting off of passengers?

A. I don't know; can't say, sir.

Q. You lived in Williamsburg County, did you not?

A. Yes, sir.

Q. What size place was Lanes?

A. I don't know what size place Lanes is.

Q. Is it as large as Latta?

A. I couldn't say, sir, whether it is or not.

Q. You don't know anything about it?

A. No, sir.

Q. Well, I will ask you this question: Are either Lake City or Kingstree railroad junctions?

A. No, sir.

Q. Is Latta?

A. I think so.

95 J. H. Wharton, called as a witness on behalf of the Plaintiffs, having first been duly sworn, was examined in chief by Mr. Townsend and testified as follows:

Q. Mr. Wharton, you are a member of the Board of Railroad Commissioners?

A. Yes, sir.

Q. How long have you been a member of the Board?

A. About four and a half years.

Q. You acted in investigating the complaint that was made to

the Board when request was made for the stoppage of these two trains in question here?

A. I did.

Plaintiffs offer in evidence the following letter:

LATTA, S. C., 2-23-1904.

Hon. Railroad Com., Columbia, S. C.

DEAR SIR: Enclosed find petition, which we would thank you kindly to give your immediate attention and consideration.

We learn that if your Board think it will be of any service, we can get all the stations between Latta and Clio to send them as they are anxious for this train to stop—

We beg to empress upon you our earnestness in this matter, and sincerely hope you will give same your most careful attention and consideration—

Yours very truly,

(Signed) J. J. BETHEA,

[SEAL.] *Int'd., Town of Latta, S. C.*

Mr. WILLCOX: We object to the introduction of that letter, as it is a mere correspondence between Mr. Bethea, the intendant, and the railroad commission.

Introduced subject to objection as Exhibit E.

Q. What papers are those you hold, as presented to your board?

A. This is a petition from citizens around Latta, asking the Railroad Commission to stop railroad trains 32 and 35 at Latta.

Q. How many papers have you there? There are other petitions besides the one you mention.

A. I think there are three others.

Q. What are those others?

A. Those are petitions from Dunbar, Bingham, and one other from Latta.

96 Q. Were they also presented to your Board?

A. I am not sure; I wouldn't testify to that—that any petition other than the one we hold here came to our office; but at the hearing these were—at the hearing these other three were presented.

Mr. WILLCOX: We object to the introduction of any petition except the petition on the part of the Latta people.

WITNESS: I am not prepared to say those petitions were not before us, but I know they were all here at the hearing.

Plaintiffs offer in evidence the following petition:

To the Honorable Board of Railroad Commissioners:

Having made effort with the Rail Road Authorities to stop Trains # 32 and # 35 without effect, we the undersigned Town Council and Business Men of Latta, S. C., hereby petition your Honorable Board to make Latta a Flag station for said trains for passengers only.

We will take pleasure in setting forth our reasons for this action at any time that you may suggest.

(Signed) J. J. Bethea, Intendant and Merchant; H. C. Finklea, warden and merchant; C. F. Bass, warden and merchant; F. M. McMillan, warden and merchant; W. Ellis Bethea, warden and merchant; F. M. McMillan, hardware merchant; H. A. Bethea, cashier Farmers and Merchants bank; N. E. George, wholesale groceries; R. J. Hays, merchant; A. M. Finklea, merchant; J. G. Crawford, merchant; H. A. Edwards, M. D., physician and druggist; McDonald & Ross, merchants; A. S. Manning, cashier Bank of Latta; John L. Dew, merchant and postmaster; S. A. McMillan, merchant; W. P. B. Campbell, merchant; E. L. Brown, physician and druggist; The George Co., merchants; Edwin A. Bethea, insurance agency; J. B. McCutchen, cotton buyer; E. B. Berry, president Latta Supply Co.; S. H. Smith, sec. and tre-s. Latta Supply Co.; W. G. Pace & Co., Leaf tobacco dealers; James H. Manning, president Bank of Latta; O. C. Fore, mgr. O. C. Fore Gin and Mfg. Co.; E. T. McCutchen, Livery and Sales stables; Miss Mamie Crawford, proprietor Central Hotel; F. Watkins, manager Latta Co-op. tob. Co.; M. H. Nims, merchant; J. H. Thacker, pastor M. E. Church, south Latta station; D. M. Dew, cotton buyer; J. S. Bethea, V. P. Bank of Latta; B. H. Meyers, proprietor Myer's hotel: D. Tiller, Methodist pastor; W. H. Simpson, Baptist pastor; F. A. Lathrop, druggist; J. C. Bethea; W. W. Willis, Baptist pastor; J. W. Smith, cotton buyer.

Introduced in evidence as Exhibit F.

Plaintiffs offer in evidence the following:

We the acting Intendants of Clio and Latta, S. C., do humbly petition your honorable board to consider at once the stopping of passenger trains # 32 and 35 at Latta, S. C., so as to give Latta, Clio and the stations on the Latta Branch Railroad adequate local accommodations.

(Signed) J. H. Bennett, Int'd. Clio, S. C.; J. J. Bethea, Int'd. Latta, S. C.

97 Objected to as not responsive to the pleadings; introduced subject to objection as Exhibit G.

Plaintiffs offer in evidence the following petition:

BINGHAM, S. C., *June* 7, 1904.

To the Hon. Board of Railroad Com.:

We the undersigned Citizens of Bingham, S. C. do hereby petition that the fast trains No-. 32 and 35 stop at Latta when flagged—As it is a junction of the Wilson Short Cut and the Latta Branch Railroads. (Signed) T. G. McSwain, M. D., C. D. Gaddy, Elliott Watson, W. W. -arham, A. W. McGregor, C. D. Morrison, T. C. Peshaw, H. E. English, J. W. Gaddy, C. L. Willis, P. M., James McRae, W. W. Wilks, J. A. Nicholson, E. A. M. Cormac, Jno. A. McLeod, H. A. McKay, J. F. Berry, A. J. Allen, A. L. McKay.

Objected to as not responsive to the pleadings; introduced subject to objection as Exhibit H.

Plaintiffs offer in evidence the following petition:

DUNBAR, S. C., 6/12/04.

To the Hon. Board of Railroad Com., Columbia, S. C.:

We the undersigned citizens of Dunbar a community do hereby petition your honorable board to make Latta S. C. a flag station for trains Nos. 32 and 35 for reasons already stated to you by the Latta delegation who met with you on June 18th, 1904—(Signed) R. H. Stanton, J. C. Dunbar, Jr., H. W. Boon, G. M. Cannon, J. A. Calhoun, W. C. Smith & Bro., J. E. Barrington, R. L. Welsh, Will H. Holtz, C. M. Kursteiner, J. P. Kursteiner, B. B. Stubb, John C. Dunbar, Burke Calhoun, John Calhoun, V. D. Wright, S. B. Norton, J. T. Lee, E. McQueen, J. M. Lee, D. McQueen, J. S. Smith.

Objected to as not responsive to the pleadings; introduced subject to objection as Exhibit I.

Plaintiffs offer in evidence the following letter:

MARCH 3, 1904.

Mr. W. N. Royall, Supt. A. C. L. Railroad, Wilmington, N. C.

DEAR SIR: Under this cover we hand you original petition drafted by citizens of Latta, S. C., and as we are informed supported by citizens along your line to Clio, requesting flag stops for Nos. 32 and 35.

We hope that this is a reasonable demand within your view, and that you can make these stops on flag without a formal hearing in this office. Kindly review, and copy if you so desire, this petition and return it at the earliest possible moment to this Board with your views.

By order of the Board.

—— ——, *Chairman.*

98 Q. Mr. Wharton, who signed that letter?

A. Mr. Garris. Mr. Garris was chairman of the Board at that time.

Letter introduced in evidence and marked Ex. K.

Q. Please state what letters these are?

A. They are from Mr. Royall's office; they are signed by Mr. Royall, the general superintendent.

Mr. WILLCOX: One, I think, is signed by Mr. E. Borden.

Q. They were the officers of the Atlantic Coast Line Railroad Company at the time of this investigation?

A. Yes, sir.

Mr. TOWNSEND: We offer those letters in evidence.

Mr. WILLCOX: The letters are objected to on the ground that it is not in evidence that those letters constituted any part of the

alleged hearing before the Railroad Commission, and it is simply in the nature of a correspondence between the Railroad Commission and the Railroad Company anterior to the hearing on the petition.

The letters are as follows:

WILMINGTON, N. C., *March 7th*, 1904.

Mr. C. W. Garris, Chairman, South Carolina Railroad Commissioners, Columbia, S. C.

DEAR SIR:—I beg to acknowledge receipt of your letter of the 3rd inst., attaching original petition from the citizens of Latta, S. C., requesting that that point be made a flag station for Trains Nos. 32 and 35.

I herewith return you the original petition and beg to advise that it is with great difficulty that we can maintain the present schedule of these two trains, and with any additional stops it will be impossible for us to make the time. For your information, I attach a letter which has just been written to me by Mr. Borden, our General Superintendent of Transportation, in reference to this matter. You can very readily understand that if we increase the number of stops on these trains, we are placed at a great disadvantage with our fast schedules. If a stop is made at Latta, the people of Rowland, N. C., just north of Dillon, S. C., will, no doubt, ask for stops to be made with these same trains at their station. This would not only be the case at Rowland, but I think at several other points.

Referring to that portion of Mr. Borden's letter as to the assurance given us when the stops were agreed upon at Dillon for these trains: I beg to advise that I have taken this question up with Mr. Kenly, Fourth Vice-President & General Manager, and he confirms what Mr. Borden has to say in reference to the Com-
99 missioners stating they would take care of this matter if the people of Latta ever made request for Trains Nos. 32 and 35 to make stops at that station.

For your further information, I have attached copies of some correspondence between Mr. Bethea, Intendant of the Town of Latta, and our Company, in reference to a connection from the South, and on our last change of schedule which went into effect on January 10, 1904, we changed the time of the Latta Branch train so as to leave Pee Dee, S. C. after the arrival of Trains Nos. 50 and 32. This train is due to arrive at Latta at 9.13 P. M., only twenty-seven minutes behind Train No. 32, and, this was done in order to accommodate the people of Latta in accordance with the request made by Mr. Bethea. We cannot, therefore, think that the present petition which has been sent in, is reasonable, and I regret that we cannot make the stops at Latta with Trains 32 and 35 as is asked for in the petition.

Yours truly,

(Signed) W. N. ROYALL,
General Superintendent.

Introduced in evidence subject to objection and marked Exhibit L.

WILMINGTON, N. C., *Mar.* 5, 1904.

Mr. W. N. Royall, Gen. Supt., City.

DEAR SIR: I return herewith papers received with your letter of March 4th in regard to petition of parties at Latta for trains Nos. 32 and 35 to stop at that point.

Our records will show that trains 32 and 35 are pulling their full complement of cars—9 and 10 daily. The schedule of No. 32 is very fast, averaging about 40 miles per hour, and that of No. 35 about 38 miles per hour. No. 32 at present makes six station stops and No. 35 seven station stops, in addition to two or three stops for water, which depend upon the size of the train. The records will also show that with a few exceptions we are unable to maintain the schedules that are now being operated, and it is simply out of the question for us to entertain a proposition to stop these trains at Latta. Such a concession would sooner or later result in similar requests being made for the trains to stop at other stations of equal importance as Latta, and thereby entirely defeat the purpose for which these trains are run. If I remember correctly, when the question of stopping these trains at Dillon was brought up on several occasions, we were assured by the Commission that if we acceded to the wishes of the parties at Dillon and stopped the trains at this point, the Commission would not bring any pressure to bear in case Latta or other points insisted upon the trains making additional stops. I feel quite sure that the General Manager will corroborate this statement. You will recall that we only recently changed the schedule of the Latta Branch train to connect with No. 50 at Pee Dee so that the people on the Latta and Clio branch would have connection with No. 50, which gives them substantially the same service as if No. 32 stopped at that point. At the Time Convention held at Washington some time since, we asked for more time for trains 32 and 35, but connections were unable to let us lengthen out the schedule.

I think if you will give the Commission these facts, they
100 will appreciate our position, and not insist upon the trains stopping at Latta. We simply cannot make this stop with trains 32 and 35.

Yours truly,
(Signed) E. BORDEN.

Introduced in evidence, subject to objection, as Exhibit M.

Q. Now, Mr. Wharton, these letters to W. N. Royall dated May 12th and 13th, the copies are just —— —— Chairman. Who were the originals signed by?

A. Mr. Garris, Chairman. We always make copies.

The plaintiffs offer in evidence the following letter:

MAY 12, 1904.

Mr. W. N. Royall, General Supt. A. C. L. Railroad, Wilmington, N. C.

DEAR SIR: Referring further to our phone message of this date regarding the petition of citizens of Latta, S. C., for the stopping of certain trains on your line at that point.

We beg to advise you that these people still insist that they are entitled to this consideration, and further ask a hearing upon this subject to be appointed for May 18th. We must request you to be here on the night of the 17th, because the meeting must take place as early as nine o'clock on the following morning.

You may bring your file on the subject of their petition, but please do not disappoint us. This appointment, of course, is made upon authority of your conversation this morning.

By order of the Board.

—— ——, *Chairman.*

Objected to on same ground as to previous letters; introduced subject to objection as Exhibit N.

The plaintiffs offer in evidence the following letter:

MAY 13, 1904.

Mr. W. N. Royall, General Supt. A. C. L. Railroad, Wilmington, N. C.

DEAR SIR: Referring to your favor of the 12th instant in the matter of Sunday train for Bishopville, S. C.

We beg to advise that we have written to the parties at Bishopville calling their attention to the two petitions, and saying that the Board dislikes very much to undertake to settle this question between the citizens, and asking if they cannot get together and settle it among themselves. To this communication we have not yet had reply. As soon as we hear from them we will immediately advise you.

—— ——, *Chairman.*

By order of the Board.

—— ——, *Secretary.*

Objected to on same ground as to previous letters, introduced subject to objection as Exhibit O.

101 The plaintiffs offer in evidence letter from D. M. McColl to C. W. Garris, dated May 26, 1904, petition of people of Clio, and letter from —, Chairman, to D. M. McColl, dated May 30, 1904. Objected to because it is a communication between a third party and the railroad commission; there is no evidence that the petition was ever filed with the railroad commission, and no evidence that it was ever brought to the attention of the railroad company anterior to the alleged hearing.

The letter referred to is as follows:

CLIO, S. C., 5/26*th*, 1904.

Mr. C. W. Garris, Clio, S. C.

MY DEAR SIR: Enclosed please find petition which should of been forwarded to you some time ago but owing to the fact that it was miss placed is the cause. However I hope it will reach you in due time for consideration we are very much in need of this arrangement from this point & certainly hope your honorable board will see fit to put it in effect at once. Trusting this will meet with your favor & receive your earliest attention,

Yours very truly, D. M. McCOLL.

Introduced in evidence subject to objection as Exhibit P.

The petition above referred to is as follows:

To our Honorable Board of Railroad Commissioners:—

We, the undersigned Town Council, Business men and Citizens of Clio, living at terminal of Latta Branch Railroad, believing that travel from this point merits consideration from the A. C. L. Railroad, and having no other way of reaching the Fast Mail North and South Bound Trains except over the Latta Branch, respectfully petition your Honorable Board to make Latta a Flag Station for A. C. L. Fast Mail Trains Nos. 32 and 35.

(Signed) Levi Ivey, Mayor; Henry J. Bennett, Town Clerk; J. H. Stanton, alderman; J. E. McLeod, alderman; W. F. Crass, Cashier Bank of Clio; A. L. Calhoun, Jr., merchant; E. Sternberger Co., merchants; Geo. R. Welch, merchant; W. H. Holt, merchant; W. C. Smith & Bro., merchants; H. C. McColl, merchant; W. R. Sahmon, merchant; D. P. Lann, merchant; T. D. McLaurin, merchant; J. H. Bennett, prest. and treas. J. H. Bennett Co.; Chas. Manning, sec. J. H. Bennetts Co.; J. C. Covington, K. P. distributor and general merchandise; E. W. Smith.

Introduced in evidence subject to objection as Exhibit Q.

The following is the second letter above referred to:

MAY 30, 1904.

Mr. D. M. McColl, Clio, S. C.

DEAR SIR: We beg to acknowledge receipt of your favor
102 of the 26th instant containing petition of the citizens of Clio asking that Latta be made a flag station for A. C. L. trains Nos. 32 & 35.

We have had this matter up with Supt. Royall and he has taken it up with a committee of citizens from Latta. We hope that the matter wil be satisfactorily arranged for both citizens of Clio and Latta.

Will advise you later.

—— ——, *Chairman.*

By order of the Board.

—— —— *Secretary.*

Introduced in evidence subject to objection as Exhibit R.

The plaintiffs offer in evidence the following letter:

WILMINGTON, N. C., *May 31st*, 1904.

Mr. C. W. Garris, Chairman South Carolina Railroad Commissioners, Columbia, S. C.

DEAR SIR: I beg herewith to hand you for your information, copy of my letter of the 30th inst., addressed to Mr. J. J. Bethea, Intendant of the Town of Latta, S. C., relative to the petition the people at that point sent in requesting Trains Nos. 32 and 35 be stopped on signal at Latta. I regret very much that we find after going over this matter thoroughly we could not make the stops at Latta with these trains, and thought it well to let you see what I have said to Mr. Bethea.

Yours truly,

(Signed) W. N. ROYALL,
General Superintendent.

Objected to on the same ground as to former letters; introduced in evidence subject to objection as Exhibit S.

The plaintiffs offer in evidence the following letter:

MAY 30TH, 1904.

Mr. J. J. Bethea, Intendant, Latta, S. C.

DEAR SIR: I beg to acknowledge receipt of your letter of the 26th inst., and in reply thereto will say that the time fixed upon for me to write you, I understood from the last remark of the Chairman of the Railroad Commissioners of South Carolina, was thirty days; however, it was my intention to write you as soon as I could do so after taking the question up and going over it thoroughly with our other officials.

We have gone over this matter very carefully, and I regret to say that we cannot make Latta a flag stop for our Trains Nos. 32 and 35. As already explained to the Commissioners and your Committee when in Columbia, S. C. on the 18th inst., it is a very difficult thing for us to maintain our present schedule, and to put on additional stops for these trains would make it impossible for us to make the time. I further explained to you that the Post Office Department is now requiring us to make a monthly report to them of all delays met with by these trains. It is, therefore, out of the question for us to have any more stops on these trains than those we have at present.

For your information, I will state that we have just declined to allow either of these trains to make a stop which has
103 been requested of us at another junction point on our line.

I think I fully explained this matter before the Commissioners on the 18th inst. If the people of Latta, or of Clio, have any suggestion to make in reference to any change in the schedule of the passenger train now running between Clio and Pee Dee, we will very gladly consider it, and if it is possible to do so, comply with their wishes.

I am sure that you gentlemen know perfectly well that it would

give us pleasure to grant your request in reference to stopping trains Nos. 32 and 35 at Latta if we felt we could possibly do it without seriously interfering with this through fast mail service.

Yours truly,

—— ——,
General Sup't.

Objected to on same ground as to previous letters; introduced in evidence subject to objection as Exhibit T.

The plaintiffs offer in evidence the following letter:

JULY 1 1904.

Mr. W. N. Royall, Sup't A. C. L. Railroad, Wilmington, N. C.

DEAR SIR: Enclosed we beg to hand you copy of letter received from the Intendant of the town of Latta written him by the Attorney General of this State. This is sent for your information.

It is very clear that the Attorney General has given the citizens of Latta the information that this Board can require the trains referred to to stop at Latta if the local conditions have not been adequately met. This information was furnished these citizens without our knowledge and they forwarded the same to this Board demanding that we have said trains stopped as they have not the required accommodations they are entitled to under the law.

Kindly let us have your opinion of this situation as soon as possible.

—— ——, *Chairman.*

By order of the Board.
—— ——, *Secretary.*

Objected to on same ground as to previous letters; introduced subject to objection as Exhibit U.

The plaintiffs offer in evidence the following letter:

WILMINGTON, N. C., *July* 6, 1904.

Mr. C. W. Garris, Chairman South Carolina Railroad Commissioners, Columbia, S. C.

DEAR SIR: I beg to acknowledge receipt of your letter of the 1st instant,, enclosing copy of letter dated June 18th from Attorney General U. X. Gunter to Mr. J. J. Bethea, relative to the question of stopping our Trains Nos. 32 and 35 at Latta.

I am now endeavoring to get up such information that I think is necessary to show to the Commissioners that we have ade-
104 quate passenger accommodations to and from Latta, and that to expect us to stop Trains 32 and 35 at that point is unreasonable. I will forward you this information as soon as possible.

Yours truly,
(Signed) W. N. ROYALL,
General Superintendent.

Objected to on same ground as to previous letters; introduced in evidence subject to objection as Exhibit V.

The plaintiffs offer in evidence the following letter:

JULY 8, 1904.

Mr. W. N. Royall, General Sup't A. C. L. Railroad, Wilmington, N. C.

DEAR SIR: Your favor of the 6th instant duly to hand. We note that you say you expect to get up information that will show to the Commission that the passenger service given to people at Latta and Clio furnishes ample accommodation for the citizens. We must beg that you get this information as soon as possible as these people are very persistent in their demands that something more should be done than has been done at this time.

—— ——, *Chairman.*

By order of the Board.

—— ——, *Secretary.*

Objected to on same ground as to previous letters; introduced in evidence subject to objection as Exhibit W.

Plaintiffs offer in evidence the following letter:

JULY 18, 1904.

Mr. W. N. Royall, General Sup't A. C. L. Railroad, Wilmington, N. C.

DEAR SIR: After receiving your last favor referring to the opinion of the Attorney General, and also after personal conference with him, we have decided before taking final action in the matter of the train service rendered the people of Latta to make a personal visit to Latta. Commissioners Wharton and Caughman will leave here on Sunday afternoon, the 24th instant, and go through to Dillon and drive back to Latta by private conveyance so as to be there early Monday morning. We will be glad to have you meet us on that date.

—— ——, *Chairman.*

By order of the Board.

—— ——, *Secretary.*

Objected to on same ground as to previous letters; introduced in evidence subject to objection and marked Exhibit X.

Plaintiffs offer in evidence the following letter:

WILMINGTON, N. C., *July* 19, 1904.

Mr. C. W. Garris, Chairman South Carolina Railroad Commissioners, Columbia, S. C.

DEAR SIR: I beg to acknowledge receipt of your letter of the 18th instant in reference to Commissioners Wharton and
105 Caughman visiting Latta, S. C. on next Monday, the 25th instant, and note that you would like for me to meet them there on that date in reference to the petition of the people of Latta to have Trains Nos. 32 and 35 stop at that point on signal.

I will try to be on hand at the time named in your letter.

Yours truly,

(Signed) W. N. ROYALL,
General Superintendent.

Objected to on same ground as to previous letters; introduced subject to objection as Exhibit Y.

The plaintiffs offer in evidence the following telegram:

Dated Wilmington, N. C., 7/22, 1904.

To C. W. Garris:

Your letter of the 20th rec'd will go to Latta fro-, Florence on our train No. 40 Monday the 25th inst. This train is due at Latta at 10.30 A. M.

(Signed) W. N. ROYALL.

Objected to on same ground as to previous letters; introduced subject to objection as Exhibit Z.

Plaintiffs offer in evidence the following letter:

JULY 29, 1904.

BOARD OF RAILROAD COMMISSIONERS OF SOUTH CAROLINA
v.
ATLANTIC COAST LINE RAILROAD COMPANY.

Mr. W. N. Royall, General Sup't A. C. L. Railroad, Wilmington, N. C.

DEAR SIR: We beg to hand you herewith the finding and order of this Board in the matter as set forth as follows:

On petition of the town authorities of the town of Latta and of Clio and citizens along the Latta Branch Railroad for the stopping of trains Nos. 32 and 35 on flag for receiving and delivering passengers at said station. After personal inspection of the situation at Latta, and the demand of said citizens for these accommodations, it appears to this Board that sufficient accommodation was not furnished to these citizens to fulfill the requirements of the statutes of this State. The evidence was sufficient to warrant this Board in demanding that better accommodation should be furnished, and that it was not unreasonable to ask the said company to stop trains Nos. 32 and 35 on flag.

Therefore, it is hereby ordered that said trains shall stop on flag at said Latta station on and after August 1st.

—— ——, *Chairman.*

—— ——, *Secretary.*

P. S.—Not having heard from you agreeing to the understanding and agreement as understood by Commissioners Wharton and Caugh-

106 man we forward you the above order. Not hearing from you we presume that it has become the decision matter. If such is a fact kindly notify us officially as soon as possible.

—— ——, *Chairman.*

By order of the Board.

—— ——, *Secretary.*

Objected to on same ground as to previous letters; introduced in evidence subject to objection as Exhibit AA.

Plaintiffs offer in evidence the following letter:

WILMINGTON, N. C., *August* 30, 1904.

Mr. C. W. Garris, Chairman South Carolina Railroad Commissioners, Columbia, S. C.

DEAR SIR: I beg to acknowledge receipt of your letter of July 29th in reference to stopping Trains Nos. 32 *4ns* 35 on flag at Latta, S. C.

Yours truly,

(Signed) W. N. ROYALL,
General Superintendent.

Objected to on same ground as to previous letters; introduced in evidence subject to objection as Exhibit BB.

Plaintiffs offer in evidence the following letters:

WILMINGTON, N. C., *August 30th,* 1904.

Mr. D. P. Duncan, Secretary South Carolina Railroad Commissioners, Columbia, S. C.

DEAR SIR: I beg to acknowledge receipt of your letter of the 24th instant, enclosing copy of letter of July 29th, which came to me by express, in reference to Trains Nos. 32 and 35 stopping on flag at Latta, S. C.

I regret that I have heretofore failed to acknowledge receipt of this letter of July 29th. My information is, that the company has sixty days in which to decide the matter. Will you kindly advise me if I am properly informed as to this?

Yours truly,

(Signed) W. N. ROYALL,
General Superintendent.

SEPT. 1, 1904.

Mr. W. N. Royall, General Sup't A. C. L. Railroad, Wilmington, N. C.

DEAR SIR: Replying to your favor of the 30th ultimo, I beg to say that your information is correct, and that your Company under the Statutes of this State has 60 days in which to decide whether you will accept the order of this Board or not. The object that I had in my last favor addressed to you was simply to know if

you had received this communication. This was the only matter that I was responsible for.

Yours truly,

—— ——, *Secretary.*

Objected to on same ground as to previous letters; introdficed in evidence subject to objection as Exhibit CC.

107 Q. Did you come to Latta to the hearing of this petition?
A. Yes, sir.
Q. Who appeared on behalf of the railroad company?
A. Mr. Willcox and Mr. Royall. There might have been others, but those are the two.
Q. Did it make a showing before your board?
A. Yes, sir.
Q. Did your board consider the matter?
A. Yes, sir.
Q. And decided on July 29th?
A. Yes, sir, it was right along those dates.
Q. That was the date your decision was filed?
A. Yes, sir.
Q. Mr. Wharton, do you know the Columbia, Laurens and Newberry road—Columbia, Newberry and Laurens, I believe is the name?
A. Yes, sir.
Q. Is that operated in connection with the Atlantic Coast Line?
A. They have a traffic arrangement. Now, what per cent. of the fares is given to either I don't know, but they have a traffic arrangement whereby the trains of the Atlantic Coast Line run over it.
Q. The trains of the Atlantic Coast Line are operated over that road to Spartanburg?
A. To Greenville.

Mr. WILLCOX: We object to that as irrelevant.

Q. Does that traffic arrangement apply to passenger trains?
A. To passenger trains.
Q. And in that way the passengers from the Coast Line can reach Greenville in the morning?
A. Yes, sir.

Mr. WILLCOX: We object to the testimony as to any arrangement that the Coast Line has with the Columbia, Newberry and Laurens Railroad as irrelevant.

108 Cross-examination.

By Mr. WILLCOX:

Q. The Columbia, Newberry & Laurens road is a separate corporation, isn't it?
A. Yes, sir. At least it has a different president to the Atlantic Coast Line.
Q. And makes its separate returns in every respect for taxation?
A. Yes, sir.

Q. It has separate reports?

A. Yes, sir.

Q. And so far as you know the Coast Line has nothing to do with running trains over that road?

A. Yes, sir, I know this: that the same conductor and train crew that leaves Charleston with the Atlantic Coast Line goes right over the C. N. & L. and on to Greenville.

Q. So far as you know the C. N. & L. has control of the running of those trains, pays the expenses of the running of those trains and receives the profits of the running of those trains, if any?

A. You mean the C. N. & L.?

Q. Yes?

A. Well, sir, we have never investigated in that matter, but the common understanding of the Commission has always been that being the same train the rental was paid. Now, I don't know that. But I know the Atlantic Coast Line people furnish all the conductors, engineers, train crew in every way. Now, what settlement they make has never been brought to the attention of the Commission.

Q. When the Commission takes up any question with the C. N. & L. railroad do they deal with the C. N. & L. railroad officials or with the Coast Line?

A. We take it up with Mr. Childs, the president of the C. N. & L.

Q. You would not know to the contrary if I were to state to you that the C. N. & L. entirely manages the running of the trains, pays the conductors, receives the profits and pays the expenses of the running of trains over the C. N. & L. railroad—You wouldn't know whether it was a correct or an incorrect statement?

109 A. No, sir, of my personal knowledge I would not. It is only based upon a common sense proposition—no work for nothing.

Q. In other words, if the same conductors were to go over the R. F. & P. Railroad, or the Pennsylvania Railroad——

A. The Pennsylvania is out of our jurisdiction and we haven't looked into that.

Q. But you couldn't say that if it was?

A. No, sir.

Q. As a matter of fact, the trains going by Latta here will have the same conductors and porters from Jacksonville to New York: that wouldn't make them run over the same road, would it?

A. There is a difference between a common passenger train and a Pullman. These long lines, that Pullman is furnished and, if I understand it, the railroad people pay the Pullman people for allowing them to run it.

Q. What would you say about the fact that the Southern runs passenger trains over the Coast Line from Savannah to Jacksonville? That would not make the Southern the owner of the Coast Line or the Coast Line the owner of the Southern?

A. It would not, sir, and I am only testifying something that comes under my observation every week.

Q. These arrangements are often made under your supervision in order to facilitate travel?

A. Yes, sir.

Q. And it is not inconsistent with each road controlling that train after it gets on its line?

A. No, sir.

Q. Mr. Wharton, the petition that was filed by the people of Latta is the only petition upon which the railroad was summoned to the hearing at Latta?

A. Well, I would not testify positively on that point. These other petitions, and I am inclined to think from the date of one—

110 that one had been delayed—and it did come in; but I wouldn't positively say so. But five petitions were present at the hearing, and the petitioners were present and testified.

Q. But so far as your recollection goes the three petitions other than the Latta petition were never presented to the Board anterior to the Latta hearing?

A. No, sir, I couldn't testify that was a fact, but I do know they were before us the day we had the hearing.

Q. Was the railroad, according to your recollection, notified prior to the hearing here at Latta of the existence of these petitions?

A. Well, sir, I wouldn't say that. The letters on file I think will show. We took the matter up with Mr. Royall and he declined to make the stops and we requested him to meet us on petition.

Q. That is the Latta petition?

A. Yes, sir.

Q. But you can't say that the three other petitions other than the Latta petition were presented to him prior to the hearing, or that he was notified those petitions were to be used?

A. I can't say, but I will say that if those petitions reached the office in the early part of July I am satisfied they were forwarded to him; but I couldn't say that from memory.

Q. If they had been forwarded the Railroad Commission would have some letter or a copy of a letter forwarding them?

A. It is likely, sir.

Q. In other words, in the matter of that importance, as to whether they were forwarded or not, of course as a Commissioner you would not trust to your recollection, but would go to the files and produce copies?

A. Go to the files. We retain a copy of every letter. I

111 didn't know I would be put on the stand as a witness. Consequently I made no effort to refresh my memory or to take from the files any paper.

At this point, the reference adjourned to meet again at Clio at ten o'clock a. m. tomorow, July 28th, 1905.

CLIO, S. C., *July 28th*, 1905.

Pursuant to adjournment, reference was called at 10 o'clock today. The same parties and attorneys were present, except the members of the Railroad Commission. The following testimony was heard:

J. C. COVINGTON, called as a witness on behalf of the Plaintiffs, having first been duly sworn, was examined in chief by Mr. Townsend, and testified as follows:

Q. Mr. Covington, where do you reside, do business?
A. In Clio, South Carolina.
Q. On what railroad is Clio?
A. Latta Branch.
Q. Is that the only railroad reaching it?
A. Yes, sir.
Q. What is the size of the place?
A. About 700, I think, to 800.
Q. Are there any other places of business between here and Latta?
A. Yes, sir, business is done at Dunbar, Bingham and Mallory.
Q. Stations on this same road between here and there?
A. Yes, sir.
Q. About what is the amount of business done here?
A. I think about half a million dollars.
Q. What facilities are afforded by the railroad for travel to and from?
A. We have no outlet except through Latta.
Q. Nothing except through Latta?
A. Except through Latta.

112 Mr. WILLCOX: I have concluded, with your permission, that I will not interrupt any witness by any objections. I will wait always until he gets through, with your permission.
Mr. TOWNSEND: All right.

Q. In going from Clio to points beyond Latta, what are the connections afforded, what trains can you take to get off?
A. Well, do you want me to state the schedule?
Q. Well?
A. We leave here in the morning at 7 o'clock and make connections going south at Latta; but going north in the afternoon to catch that fast train you have either to drive through from here to Dillon or go to Florence, at an additional expense of railroad fare from Latta to Florence—both ways.
Q. About what are the number of persons from here, say, that are delayed there in order to catch this train going north in the afternoon, fast train?
A. I don't know that. I have counted up a few minutes ago. I know of a dozen people that have gone from this place to points north within the last ten days.
Q. And they have been unable to make this connection in the afternoon?
A. Unable to make that connection in the afternoon.
Q. How large is the passenger travel generally for points beyond Latta?
A. I couldn't answer that question; I don't know.
Q. Are through tickets sold here for points?
A. I am not positive of that. I think not.

Q. Are mileage books sold here? Can you buy them at this agency?

A. I think so. You can get them at this agency by applying for them. They will have them sent here for you.

Q. How far is the Seaboard from here—the Seaboard Railroad station?

A. I think the nearest point is about fifteen miles.

113 Q. Is that ever used by people?

A. Quite often.

Q. Why?

A. Well, they can make better connections. They can't get any connections at all to the north in the afternoon from here.

Q. On the Coast Line, so they drive across to the Seaboard?

A. Yes, sir.

Q. To what point is that they drive across?

A. To Laurinburg, to Maxton, and they occasionally go to Bennettsville and go from there to Cheraw.

Mr. WILLCOX: We interpose the usual objection to any testimony concerning conveniences at Clio, as to the sale of tickets, and as to the Seaboard connection, on the same ground.

Cross-examination.

(By Mr. WILLCOX:)

Q. You have a double daily connection or service from Clio to Latta?

A. Yes, sir.

Q. Leaving here on the morning train to Latta you have stated that you make an excellent connection south?

A. Yes, sir, good connection south.

Q. Is it not also a fact that when you go on the morning train to Latta you also make an excellent connection north?

A. To the north in the morning? Yes, sir, on the local train.

Q. When you use the service between Clio and Latta in the afternoon you also make a good southern connection?

A. Southern connection, yes, sir.

Q. Your only objection, then, is that in going to Latta south in the afternoon from Clio that you can't make the connection with train 32 going north without driving from Latta to Dillon?

A. Yes, sir, or going to Florence.

Q. Train No. 40 which goes by Latta north in the morning

114 and which makes connection with the train from Clio to Latta is a nice train?

A. Yes, sir, that is a very nice train.

Q. Carries a Pullman?

A. I don't know about that.

Q. Makes all the northern connections?

A. Yes, sir.

Q. And you have used that train?

A. Yes, sir, I have used that.

Q. Now in the afternoon when you go from Clio to Latta you can

drive from Latta to Dillon, a distance of six miles, and catch train No. 32 going north?

A. By driving from Latta to Dillon, yes, sir.

Q. That is only six miles?

A. I think six miles.

Q. And do you mean to say that a great many people find it more convenient to drive from Clio to the Seaboard, 15 miles, rather than make the connection at Dillon in the way I have stated?

A. I think they do sir. I know of a party of six that left here some time ago and got to Latta and couldn't get any team to drive to Dillon with at all.

Q. You don't mean to say, however, that any inconvenience connected with going to Latta from Clio in the afternoon and driving from Latta to Dillon actually caused them to go to the Seaboard?

A. I believe they would go over the Atlantic Coast Line if they had that connection there.

Q. Isn't it rather a matter of preference than of being subjected to any inconvenience?

A. I think some times it is and some times it is not.

Q. Which, in your judgment, is the more convenient, to go down to Latta and drive to Dillon and catch 32 connection going north, or driving to the Seaboard connection?

A. Well, the drive, of course, would be shorter from Latta to Dillon. I don't know why—I am not prepared to say why they prefer going to the Seaboard.

115 Redirect examination.

(By. TOWNSEND:)

Q. Mr. Covington, what is the character of the accommodations given on the trains between here and Latta? I mean the character of the train, the cars?

A. I think they are very sorry.

Q. Will you describe the character of the cars? The Court can't see it, you know.

A. Well, I don't know hardly how to describe it, only it seems to me we have a very sorry car; very sorry to ride in.

Q. What are the objections to it?

A. Well, I don't know. I don't think it is very comfortable. I don't think it is hardly decent, I don't think. We have only one car and it is not a very good one. That is the only objection I can give to it. Of course it will hold them all right—pull them.

(By Mr. WOODS:)

Q. How far is it from here to Latta?

A. I think it is 19 or 20 miles; 20, I believe, we call it.

Q. What time does the train leave Clio for Latta in the afternoon?

A. Four thirty.

Q. What time does it get to Latta?

A. I think about 5.30.

Q. Is the train leaving for Latta in the afternoon a freight or a passenger train, or a mixed train?

A. How is that?

Q. Is the train leaving here about 4.30 for Latta a passenger or a mixed train?

A. Well, it is mixed; both ride in the same coach.

Q. I mean does it carry freight and passengers?

A. Yes, it carries freight and passengers.

Q. So it is a freight train, with passenger accommodations?

A. Yes, sir.

Q. Then it takes about an hour to run this 19 or 20 miles to Latta?

A. Yes, sir.

Q. And after you get to Latta to go to Dillion is it or
116 is it not nesessary to hire a horse and buggy?

A. Yes, sir, it is necessary to hire one to get there.

Q. If a person goes from Clio to the Seaboard connection, can they use their own horse and buggy?

A. Very often they can.

Q. Then, in reply to Mr. Willcox's question, what would you say was the reason people go to the Seaboard?

A. Well, some go there, they go there—some do—because they have their own turnouts. And, as I said a while ago, it is sometimes the case you can't get turnouts at Latta—couldn't a few days ago.

Q. You say a party of six went down there a few days ago and couldn't get it?

A. Yes, sir.

Q. What did the Coast Line do?

A. They stopped the fast train for them. It is preferable, of course, not to have to hire a team to go to either one of the places.

Q. It is an inconvenience?

A. Yes, sir.

Recross-examination.

(By Mr. Willcox:)

Q. How far is it from here to Dillon?

A. Twenty miles.

Q. Do you assign as the reason why people drive to the Seaboard connection, fifteen miles, that they have their own teams?

A. Not altogether that reason.

Q. Well, how much of it is due to that reason?

A. I am not prepared to say.

Q. As a matter of fact, if they would drive their teams to the Seaboard connection you think it would be less expense than to go to Latta and drive to Dillon?

A. Yes, sir, it would be less expense.

Q. Why?

A. Well, you have got a team that would cost you very near as much to drive from Latta to Dillon as it would be to drive to these other points.

117 Q. It is just as expensive, then, to get a team for six miles as for 15?

A. Well, not altogether, but it don't make so much difference for that difference, I don't think.

Q. You have no special objection to this car, have you?

A. I can ride in it all right, I suppose.

Q. You haven't undertaken to name any special objection?

A. No, sir, I wouldn't indict the railroad on account of it.

Q. You have no special complaint to make against the railroad on account of the car used between here and Latta?

A. Well, I wouldn't like to make any special complaint about it. People as a general thing do complain about it when they ride on it.

Q. I am asking what you do. Have you any special objection to it, complaint to make?

A. No, sir, I make none myself, no special complaint as to the character of the car.

H. J. BENNETT, called as a witness on behalf of the Plaintiffs, having first been duly sworn, was examined in chief by Mr. Woods and testified as follows:

Q. Where is your residence and place of business?

A. Clio, South Carolina.

Q. On what railroad is Clio?

A. On the Latta Branch.

Q. Is the outlet to Latta the only railroad outlet from Clio?

A. Yes, sir.

Q. From your own personal experience and from what you have observed and know of your own knoweldge as to others, is there a good volume of travel here that is demanding double-daily service at Latta?

A. Well, sir, it seems to me it is. I know there is a pretty good volume of travel. While I don't travel up and down the road very much, I know of people passing through and making this connection.

118 Q. And you think there is a good volume of travel demanding this double-daily service? Weren't you in that party of six some time ago?

A. Yes, sir.

Q. And they stopped the train?

A. Yes, sir.

Q. What do you say about this passenger coach? I ask you to answer these questions: Whether that car is comfortable?—Well, you just describe that car yourself, as to the seats and the cleanliness, the facilities for drinking water, water closets, and so on?

A. Well, I would consider the car very uncleanly. It is a very light car, and very rough—extremely rough; and it has very poor lights, has no closet, that is, the best end of it, where the ladies ride, there is no closet.

Q. There is only one closet?

A. Only one closet, and that is in the smoker.

Q. What about the facilities for drinking water?

A. Well, so indecent that people who ride on it hardly ever drink.

Q. Do they or not give you a glass to drink out of?
A. They do not. They give a very rusty tin cup.
Q. So that is your objection to that car?
A. I think that is all I have.
Q. Have you looked into the sale of tickets, whether you can buy coupon tickets or mileage books, whether they keep them on sale as a regular thing, and whether the passenger receipts that naturally belong to the Clio office go to other offices?
A. Well, sir, we generally have to notify the agent when we want a mileage book or coupon ticket three or four days ahead.
Q. Then, I understand it, they are not kept on sale regularly?
A. Not kept on sale here, no.
Q. Is it or not a fact that parties frequently have to buy their tickets at other points?
A. Yes, sir, unless they notify the agent several days
119 ahead.

Mr. WILLCOX: We object to the questions asked the witness as leading. We object to the questions and answers as irrelevant, because concerning a car used between Latta and Clio, which has nothing to do with the present controversy; and questions concerning the sale of tickets at Clio, which have nothing to do with the present controversy, and therefore irrelevant.

Cross-examination.

(By Mr. WILLCOX:)

Q. Mr. Bennett, what has an uncomfortable car used between Clio and Latta, South Carolina, got to do with stopping trains 32 and 35 at Latta? Can you see any connection between the two, any relation between the two?
A. I cannot.
Q. Do you know what question we are trying?
A. We pay as much fare to ride on this rough train as people do to ride on the good train, and we should have good accommodation, I think.
Q. The question I asked you was, What relation did that car have with stopping trains 32 and 35? Do you see any connection between the two propositions?
A. Oh, there is no connection there; of course one has nothing to do with the other, I don't think.
Q. In other words, a bad car between here and Latta has nothing to do with stopping trains 32 and 35?
A. No, sir.
Q. Can you give me your reasons why you answered Mr. Woods as follows: That there was a demand for a double-daily service by Latta? In other words, I understood you to state to Mr. Woods that there were conditions prevailing that required a double-daily service at Latta? Will you explain why, the reason for that statement?
A. Well, we can get no connection going north without going to Florence.

120 Q. Is that your sole reason?

A. Or by driving across to Dillon. Yes, sir, that is my sole reason, I suppose.

Q. Can't you make connection with the morning train north by leaving here in the morning?

A. Yes, sir.

Q. Isn't that a sufficient connection?

A. No, sir, I don't think so.

Q. Why not?

A. When people are going north they generally want a through train. That is a very tiresome train to ride all day.

Q. Why?

A. Well, it stops at every station.

Q. Why do you want to ride on the next train?

A. Well, it gives a through service and fast service for a long-distance ride.

Q. What is the principal reason—because it is fast?

A. Well, no. Well, it is fast, too. That is, it stops at very few places; puts you north so much quicker than the other.

Q. Don't you realize the fact, then, that if you take that fast train and stop it at Latta and every point you would make it like that other train?

A. If you stop it at every point the other stops you would.

Q. In other words, if you stopped it at Latta and similar points you would make it like the other train?

A. I don't know anything about the geography of the railroad.

Q. Well, you don't have to know anything about geography to know if you stop a train at every point you will make it slow..

A. I don't know how many points there are on your line as important as Latta is.

Q. You will admit that if you stop it as often as the other it will be as slow a train?

A. It will be more of a local train than it is now.

Q. Then you will admit that if you stop it at as many
121 places as you stop 39 and 40 it will be as slow a train as 39 or 40?

A. Well, the more stops there is, of course the slower the train is.

Q. Well, you don't care to admit that then—that it would be as slow a train if you stopped it at as many points as 39 or 40?

A. Oh, if you stopped it at as many points, certainly; it would be a slower train.

Q. And if you did stop it you wouldn't have the fast train to ride on?

A. If you stopped it at as many points as you did the other, what we call the "local" train, it wouldn't be no faster.

Q. You can leave Clio in the morning and make connections at Latta for all points south, can you not?

A. Well, not at Latta, no. We generally go to Pee Dee——

Q. Well, you go through Latta, don't you? That is what I mean.

A. Yes—yes; certainly.

Q. You can, then, make connection at Latta with all points south in the morning.

A. Yes, sir.

Q. Charleston, Wilmington, Marion and so forth? You also have the other train you make connection with at Latta for all points north?

A. The local train, yes, sir; and you have to stay there at Latta about three hours.

Q. Well, the train does come by there in the ordinary course of business and takes you on if you want to go north?

A. Yes.

Q. Now, in the afternoon you can go down from Clio to Latta and then can make connection with all points south?

A. Yes, sir.

Q. And you can go on to Florence and take the fast train north?

A. At an extra expense, yes; by going from Latta to Florence you can take the fast train.

Q. Or you can go to Dillon and take the train there?

A. If you can get a way to go. We could have gotten a
122 wagon the other night, I suppose, 'way up.

Q. You could have gotten a carriage, eh?

A. Couldn't get a carriage.

Q. Or you could have gotten a buggy?

A. Couldn't get a buggy.

Q. On the question of the car between here and Latta, when you said the car was unclean did you mean to say that it was uncleanly from inattention or uncleanly from the ordinary use occasioned by cinders and the like, getting in the car by ordinary use?

A. Well, the windows are always very unclean; the seats are some of them very unclean; it is just what I would call an unclean car.

Q. How often do you ride on it, Mr. Bennett?

A. Well, I ride on it—not very much; half a dozen times a year, maybe.

Q. What is the seating capacity of the car?

A. Couldn't tell you.

Q. Have good water?

A. Well, I have drunk water a few times when they had ice water; I have drunk water a few times when it was about as stale, seemingly, as it could be.

Q. Don't they get it from Clio?

A. I couldn't tell you.

Redirect examination.

(By Mr. Woods:)

Q. Have you ever gone north on Train 40?

A. That is the local train?

Q. Yes, sir?

A. Yes, sir, I have gone north on it.

Q. Does that train stop very often?

A. Well, every station on the road, as well as I remember. It has been about a year ago.

Q. Mr. Bennett, are there a very great number of stations between Latta and Richmond, a great number of stops that that train makes?

A. Yes, sir, a great number of stops.

123 Q. I will ask you to look at that map of the Atlantic Coast Line and tell me how many junctions there are between Latta and Richmond?

A. Seven.

Q. Seven between Latta and Richmond? Is Latta a junction?

A. Yes, sir.

Q. Are you confident that train 40 stops a great many more times between Richmond and Latta than seven times?

A. Now, really, I——

Q. Well, you can count the stations, if you wish?

A. When I go on that through train I generally go at night, and of course I know nothing about it.

Q. Yes, but about train 40, on the local train? Count the stations from Latta to Richmond.

A. About 26 stops.

Q. And seven junctions?

A. Yes, sir.

Q. So, Mr. Bennett, if trains were stopped at junctional points like Latta it would not reduce it to a slow train like No. 40?

A. No, sir.

Q. It would still be a fast train, in your opinion?

A. Yes, sir.

Recross examination.

By Mr. WILLCOX:

Q. Your objection to trains 40 and 39—that is, the local trains you describe, one going south and one going north—your objection to that train is that it stops too often?

A. My objection is that it is a slow train; that's all. Of course stopping so often makes it slow.

Q. Isn't that your principal objection to it?

A. Why, yes, sir; that is about my only objection. It is a very nice train.

Q. Now, your principal objection to 32 and 35—the fast trains—is that they don't stop enough, a sufficient number of times?

A. How was that question?

Q. I say your objection to 32 and 35, which are the fast

124 trains, is that they don't stop a sufficient number of times?

A. Yes.

Redirect examination.

(By Mr. WOODS:)

Q. But your objection——

Objected to as leading.

Q. Do you wish 32 and 35 to stop at more than one point?

Objected to as entirely leading and not in reply.

A. If it stops at Latta I don't care whether it stops any more or not; it needn't stop until it gets to Richmond—anywheres.

Dr. C. S. EVANS, called as a witness on behalf of the Plaintiffs, having first been duly sworn, was examined in chief by Mr. Townsend, and testified as follows:

Q. You are a practicing physician?
A. Yes, sir.
Q. Practicing at Clio?
A. Yes, sir.
Q. Do you know what facilities are afforded for passengers leaving Clio and going to points beyond Latta?
A. I can't say that I can. I haven't given the thing any thought much, but then going off from here we have some trouble about getting off from here, it seems like, sometimes. Say if we want to go north, any way, we can make the connections all right going to some places but if we want to go on an extended trip you couldn't get off without going to Latta and going up to Florence in the morning, or Dillon one, and staying there until some time that night.
Q. You don't know the connections?
A. No, sir, I haven't given the connections any thought. But I know that is the way we have to get off.
Q. You don't know what the connections are, though?
A. Only at Latta. I know the trains we meet at Latta.
Q. Are there many persons who go from this vicinity who
125 have to go for treatment in the city hospitals?
A. Not a great many. We have sent some to Baltimore, or to New York.
Q. There is only one connection, though, by which you can send them?

Objected to as leading.

A. Only by this road.

Cross-examination waived.

A. L. CALHOUN, called as a witness on behalf of the plaintiffs, having first been duly sworn, was examined in chief by Mr. Woods and testified as follows:

Q. Where is your residence and place of business?
A. Clio.
Q. What is your business?
A. Mercantile business.
Q. Do you also farm?
A. Yes, sir.
Q. Mr. Calhoun, state your experience and what you have observed as to the experience of the people in Clio and the vicinity about the railroad connections at Latta?

A. Well, the connections in the afternoon are so that the people either have to go to Florence or drive from here to Dillon or go to the Seaboard; go to Bennettsville and go to Cheraw.

Q. Is your observation that there are or are not a considerable number of people who are inconvenienced in that respect?

A. Yes, sir, there is a great many.

Q. What is your own personal experience? How do you get out of Clio?

A. When I go in the afternoon, the last three or four trips I have made, I drove to Bennettsville and went by the Seaboard.

Q. Why did you do that?

A. It was a shorter drive than to drive to Dillon.

Q. How far is it to Bennettsville?

A. Ten miles.

Q. And how far from Bennettsville before you get to the
126 Seaboard?

A. I think it is about 12 miles.

Q. You go over to Kollock on the Seaboard?

A. Yes, sir.

Q. And go north from there? Is it possible, Mr. Calhoun, with your present railroad accommodations for you to go north oftener than once a day?

A. No, sir, not without driving or going to Florence.

Q. A direct connection, I mean? And what time do you have to leave Clio to get that?

A. Seven o'clock in the morning.

Q. Have you had any experience, Mr. Calhoun, about the buying of coupon tickets and mileage books at this office?

A. I never have been able to get them here except once or twice I have had the agent here to get mileage books for me.

Q. You haven't found them regularly on sale?

A. No, sir.

Q. How long do you have to give notice ahead to get these books?

A. About two days.

Q. And he would then get them for you?

A. Yes, sir.

Q. Have you observed whether the Clio people in the ordinary course of travel have to buy tickets elsewhere, that is, to get to other points, and mileage books?

A. I think Dillon is the nearest place where they can buy them.

Q. Mr. Calhoun, have you had any experience on the accommodations furnished between here and Latta, this car? What would you say about it? What about the general cleanliness of the car and facilities for water, water closets, lights at night, and so on?

A. Well, I have seen a great deal better.

Q. Well, tell about what this car is?

A. It is not a very good car. I think we ought to have a better car over here on this road.

Q. What about the cleanliness of the car?

127 A. I don't know hardly what to say about that.

Q. What about the lights at night?

A. The lights are generally very poor.
Q. What about the facilities for drinking water? Have you ever observed that?
A. Sometimes they have water and sometimes they have a cup and sometimes they don't have a cup to drink out of.
Q. Do they give you a glass or cup to drink out of?
A. A tin cup is all I have ever seen.
Q. How many water closets are there on that car?
A. I don't know. I think there are two. I am not certain.
Q. You don't know?
A. No, sir.

Mr. WILLCOX: We object to the questions and answers as to buying tickets at Clio as irrelevant, and anything relating to conveniences at Clio, on the Latta Branch, as irrelevant, and as to the character of the car as irrelevant.

Cross-examination.

(By Mr. WILLCOX:)

Q. Mr. Calhoun, is this correct: Can you leave Clio in the morning and go to Latta and make connection with all southern points at Latta?
A. In the morning?
Q. Yes, sir?
A. All except Columbia, I think.
Q. All except Columbia? Can you leave Clio in the morning, go to Latta and make connections with northern points?
A. Yes, sir.
Q. On what kind of train?
A. The train from Latta north, you mean?
Q. Yes, sir. Does it start from Latta?
A. No, sir; I don't know what kind of train you call it; accommodation train, I guess.
Q. Have you ever ridden on it?
A. Yes, sir.
Q. What kind of train is it, then?
A. It is a mail and express and passenger train, too, I guess.
128 Q. A Pullman?
A. Yes, sir.
Q. On that train, then, if you want to go north, you can leave Clio, go down to Latta in the morning, and make connection with that train?
A. Yes, sir.
Q. That is a good train?
A. Yes.
Q. Any objection to it?
A. The through train is a little faster is the only objection.
Q. Now, your objection to that train as compared with the night train, which is No. 32, is that it is too slow?
A. It is all right for morning but it is not all right for you to go at night.

Q. Then you have no objection to it except as to the time of the day it goes?

A. I guess that is the only objection.

Q. The only objection?

A. And the time.

Q. What time do you mean?

A. It is slower than the through train.

Q. Now, your objection to the night train is that it goes too fast and you want to stop it, make it slower? Isn't that right?

A. No, sir, it doesn't go too fast, I don't think.

Q. Don't you want to stop it at Latta?

A. Yes, sir.

Q. Wouldn't that make it slower?

A. No, sir, I don't see that it would make it any slower.

Q. What makes the other train slower than the fast train—39 and 40, that is, the morning train going north? Isn't it on account of the stops?

A. I guess so.

Q. Then if you would stop the fast train at night at Latta and similar points wouldn't it make it slower? That is, it would take longer to get to its destination, New York?

A. Well, Latta was the only place I was interested in making it stop.

Q. In other words, your desire in the premises is entirely
129 selfish?

A. Well, it would suit me a great deal better if it stopped at Latta instead of Dillon.

Q. It would suit you if the train stopped at Latta and then you wouldn't care about other points? You would rather for it after it stopped at Latta then for it to go very fast right on to New York, if you were going there?

A. Yes, sir, if I didn't want to stop anywhere else.

Q. You would like for the railroad to ignore all other places like Latta that are probably making the same request or would make the same request, that the train stop at their points, wouldn't you, after you once got on the train at Latta?

A. Well, it would depend a great deal on where I was going.

Q. Well, let's assume that you were going to New York. After the train stopped at Latta wouldn't you rather for the train to go on and pass all places like Latta, so as to give you a good speedy trip to New York?

A. Yes, sir, I guess so.

Redirect examination.

By Mr. TOWNSEND:

Q. You state you could make connection on that morning train for all points south except Columbia. How about Sumter and Orangeburg?

A. Well, that road; the road that goes from Florence towards Sumter; all points on that road.

Q. You can't make any of those by that morning train?
A. No, sir, I don't think so.

J. STRAUSS, called as a witness on behalf of the Plaintiffs, having first been duly sworn, was examined in chief by Mr. Woods and testified as follows:

Q. Mr. Strauss, where is your residence and place of business?
A. Clio.
130 Q. In what business are you?
A. General merchandise.
Q. What firm is that?
A. E. Sternberger Company. Secretary and Treasurer and manager.
Q. An incorporated company?
A. Yes sir.
Q. Is not that a very large business?
A. Yes, sir.
Q. Are you buyer?
A. I am.
Q. For this concern?
A. Yes, sir.
Q. Do you have to make many trips north?
A. I go at least twice a year.
Q. State, Mr. Strauss, what are your personal experiences and the experience of the general public, so far as you have observed, about the railroad accommodations at Latta?
A. Well, last February—I won't go back several years back—last February I left here at 4.30 in the afternoon and I got to Latta about 6.30 at night. The train was delayed along the road, taking up freights and cotton and so forth.
Q. That is a freight train, isn't it?
A. A combination train—a freight train with passenger coach attached. And I got to Latta and I wanted to make connection in Latta to take that fast train north. I was going to New York. And I got to Latta and I asked Mr. Smith, the agent, and he told me the south-bound train was late and it would be impossible for me to make the connection. The snow was on the ground, it was very cold, and I went to the stable and it was all I could do to get them to let me have a team. He rented me a horse and buggy for two dollars to drive six miles, or six and a half—whatever it is. I couldn't object to that, because I was down there and I wanted to go. I went to Dillon and I suppose I had to wait at Dillon a half an hour on account of the train being delayed that night. It was very rough weather, and a very rough drive. On several other occasions I had to do the same thing—I had to go to Florence instead of
131 driving to Dillon. I didn't care specially for a drive from Latta to Dillon, and I went to Florence and took the train north.
Q. Then, as I understand, parties driving to Dillon are subjected to great discomforts?

Mr. WILLCOX: He hasn't stated that.

898

Q. Well, just state, Mr. Strauss, in your own way?

A. I am merely telling you my experience last February.

Q. Just state about the desirability of that trip?

A. Of course I would much prefer taking the train here and going on at Latta instead of going down there to Florence or Dillon. Not alone myself; there are lots of traveling people who come up here and complain of the same thing. They either have to stay in Latta all night in order to make Dillon and save time, and instead of doing that they very often go to Florence and get supper and come back that night on the fast train to Dillon.

Q. Then, Mr. Strauss, as I understand, you testify that parties in Latta desiring through connections can only get them once in 24 hours?

A. So I understand—is the morning train. They have one train leaving in the morning about 11 o'clock, I guess.

Q. Is the volume of business here large?

A. What do you mean by that?

Q. I mean is this a large business point, in cotton and fertilizers and so on?

A. It is one of the largest, if not the largest, I judge, in the State, for a place of this size—and I have seen a great many places.

Q. Is this a very thickly settled country through here?

A. Yes, sir.

Q. Is it your observation that a considerable number of people have been inconvenienced as you were, or not?

132 A. Yes, sir, I have known of quite a number who have been inconvenienced.

Q. How many bales of cotton are sold here?

A. I think there were sold and shipped from this point last year a little over ten thousand bales.

Q. How much fertilizer do you sell?

A. Do you mean ourselves, or the town?

Q. The town?

A. I suppose between eight and nine thousand tons.

Q. What is about the general volume of business at this place a year?

A. I suppose, I would judge, anywhere between five and six hundred thousand; in that neighborhood. I couldn't accurately say.

Q. As to these trains, trains 39 and 40, what is your observation as to the running of those trains?

A. I can only say taking that morning train, I go to Greensboro and High Point two or three times a year and very often instead of taking the train at Latta I drive to Tatum and make connection at Fayetteville. That train runs very much slower than the other train, of course.

Q. Does it run slower as a whole or between stations?

A. It runs slower between stations, I judge. It seems so to me.

Q. Is it or not a fact that trains 39 and 40 have a large number of express cars and it is a very heavy train?

A. I don't know how many express cars they have.

Q. Is it or not a tremendously long train for a passenger train?

A. I don't think it is any longer than the night train. I don't

think it is as long. Yes, it is as long. The trains coming back from the north, I notice, are larger of an evening than they are going up. up.

Q. What about the car between here and Latta? Have you any remarks to make about that?

A. As far as remarks are concerned, we would like to have
133 a better car. It is not a car that if I could get a better car I would care to ride in that one, but I suppose it is the best the railroad company can do.

Q. What about accommodations, cleanliness, light, water, water closets, and so on?

A. Well, I wouldn't like to remark on that subject, because myself I don't use them on that branch.

Q. What?

A. I never use it on that branch.

Q. Use what?

A. The closet.

Q. What about water?

A. I never drink any water on it.

Mr. WILLCOX: We object to the questions to and answers of the witness relating to the character of the car, relating to the amount of freight business done at Clio, and the character of the connections concerning the Clio Branch, as irrelevant.

Cross-examination.

(By Mr. WILLCOX:)

Q. Mr. Strauss, the morning train going north is a very good train, isn't it?

A. Well, now, in what way?

Q. I mean it is a good train. Here is what I mean to say: Isn't the only objection to that train on your part, that any reasonable man could object to it, on account of its stopping at various points?

A. As far as being a train for through connection, I don't like it. I never have taken that train. I have gone as far as Fayetteville, but no farther, on that train.

Q. It is, however, a good train?

A. Oh, the train is all right, as far as the train is concerned.

Q. That is your personal objection to it?

A. My personal objection is the inconvenience I am subjected to leaving here of an evening; and to take that morning train
134 is out of the question, as I understand the connections are very poor.

Q. Well, speaking of the morning train, isn't your only objection that it stops too many times?

A. I suppose that would be the objection. It must stop often on account of making the connections.

Q. Now, as a matter of reason and common sense, if the train at night was required to stop at Latta and similar points and other stations—if it stopped at Latta—wouldn't it also be made a slow train?

A. Well, it bound to, because they can't run as fast between stations as the train that don't stop at the next station; they have more steam up.

Q. Well, then, the effect would be to make it a slow train?

A. Yes, sir.

Q. And its effect as a fast train would be destroyed?

A. Most assuredly.

Q. You say some times you take train No. 40 and yet you don't go to Latta to take it, because while the connection is made there, but you drive to Tatum?

A. Yes, sir, I do that for convenience. The train leaves here at 7 o'clock in the morning. The train leaves Tatum about 8.49 in the morning and I can leave here about 8 o'clock and catch that train and it doesn't give me a wait of two hours and a half or three hours at Latta and I reach Fayetteville perhaps about half or three quarters of an hour earlier and can get my dinner before the Greensboro train leaves.

135 S. WEILL, called as a witness on behalf of the Plaintiffs, having first been duly sworn, was examined in chief by Mr. Townsend and testified as follows:

Q. What is your business?

A. Stock business; livery business.

Q. At what point?

A. Clio.

Q. Are you in a position to know anything about the volume of travel from this place?

A. I think so, sir.

Q. What is it?

A. What do you mean by that?

Q. The amount of travel that is done to and from this place.

A. To what point? Latta?

Q. From here to all points?

A. Well, I could estimate it.

Q. What is it?

A. We have on an average here six or eight or ten traveling men every day who come in here in the morning, and a good many people from here go out.

Q. Do you know what are the connections at Latta for points north and south?

A. I think so, sir.

Q. What are they?

A. Well, you can leave here in the morning at 7 o'clock and make connections in Latta both north and south on the regular local passenger train.

Q. Could you go from here to Columbia in the morning?

A. No—with that exception, points on that branch. You make connections for Charleston and points on that branch.

Q. How about passengers going north?

A. They leave here—Most of the passengers who leave this point to go north now, they generally drive and go the other way.

Q. Where?

A. They catch the Seaboard at Maxton or go to Bennettsville and go down to Kollocks.

Q. You drive all of them?

A. Not all of them; some of them.

136 Q. What is the volume of business done by you in that regard?

A. Well, we have somebody nearly all the time, every day or so.

Q. Driving to Dillon or Maxton?

A. To Laurinburg. They generally go to Laurinburg or Maxton or Bennettsville.

Q. What do you charge for those teams?

A. Two dollars for a single team or three dollars for a double team.

Q. To either point?

A. Yes.

Mr. WILLCOX: We object to the questions to and answers of the witness as to connections concerning Clio and the Latta Branch, and as to the driving of teams from here to various points, which we regard irrelevant.

Cross-examination.

(By Mr. WILLCOX:)

Q. Mr. Weill, you don't mean to say that these people who hire teams for these points on the Seaboard in all cases hire those teams in order to make a connection with a fast train north?

A. Not all the teams I hire to these points don't—No, sir; I didn't say that at all. But I do send teams to these point to make these connections.

Q. You don't mean to say that every man who comes to Clio—traveling man or otherwise—and every man who leaves Clio—traveling man or otherwise—makes his advent into and exit out of this town by means of a through fast mail train north and south?

A. No, sir, I didn't say that at all. I was speaking of those who do go north when I said what I did.

Q. You don't mean to say that all of them do go north?

A. No, sir.

137 Plaintiffs announce that they rest here, and announce that they would await the testimony to be submitted on the part of the Defendant Company before they would decide whether they would offer any testimony in reply. The Defendant Company announced that they expected to offer testimony, and by agreement the reference adjourned to meet the first week in September at Wilmington, N. C., or such place as may be selected later, to take testimony to be offered by the Defendant Company.

138 [Endorsed:] State of South Carolina Marion County C. W. Garris *et al.*, as Railroad Commissioners Plaintiffs *v.* The Atlantic Coast Line Railroad Company Defendant Testimony taken in reference held at Latta and Clio, S. C.

139 Pursuant to adjournment reference was held at Wilmington, N. C., September 8th, 11:00 o'clock, A. M.

Present: P. A. Willcox, J. M. Johnson and Henry Mullins, representing the defendant Railroad Company. Assistant Attorney General W. H. Townsend, representing the Plaintiffs.

WILLIAM J. CRAIG, a witness for the defendant, being duly sworn, testified:—

Direct examination.

By P. A. WILLCOX, Esq.:

Q. Mr. Craig what is your position with the Atlantic Coast Line Railroad Company?

Ans. General Passenger Agent.

Q. As such have you looked into the question before this Court as to stopping trains No. 32 and No. 35 at Latta?

Ans. I have.

Q. What kind of trains are trains No. 32 and 35 of the Atlantic Coast Line Railroad Company?

Ans. They are limited through trains for the handling of mail and through passenger traffic.

Q. From what points to what points?

Ans. From New York City to Port Tampa, Florida.

Q. Which is the North bound train?

Ans. No. 32.

Q. Which is the South bound train?

Ans. No. 35.

Q. What connection, if any, do those trains make at Port Tampa, Fla.?

Ans. Sundays, Tuesdays and Thursdays, they make immediate connection with the Peninsula & Occidental Steam Ship Company for Havana, Cuba.

Q. Do I understand that both No. 32 and No. 35 make that connection? Do the boats run only on those days?

Ans. They only depart from Port Tampa on those days.

Q. When do they arrive?

Ans. Thirty-two affords connection on Wednesdays, Fri-
140 days and Sundays at Port Tampa with the Steamship line. And on Sunday and Wednesday mornings at Jacksonville, Fla., with the Florida East Coast Railway with the same steam ship connection through Miami, Fla.

Q. Have you stated simply the connection between the Steam Ship lines mentioned and "32" going North, or have you also stated the connection between the Steamship Lines in question and "35" going south?

Ans. I have shown the connection at Port Tampa for "35" South. I have not shown the connection through Miami on "35."

Q. State that please?

Ans. Under the present schedule—the summer schedule, we do not make immediate connection with the East Coast Line Railway at Jacksonville.

Q. Mr. Craig, what class of travel do you have on train- "32" and "35?"

Ans. It is considered high class tourists' travel, through travel almost exclusively.

Q. From what points to what points?

Ans. From points North of Richmond to points south of Savannah and Charleston.

Q. What are the other general purposes of that train if any?

Ans. It handles the mail contract with the United States Government to Florida, Key West and Cuban points.

Q. Considering the economical condition of the Atlantic Coast Line, and by that I mean the length of the Atlantic Coast Line Railroad Company and the volume of its through travel and business generally and also in relation to competitive lines for through travel, what would you say generally as to the necessity of the Atlantic Coast Line Railroad Company to run trains #32 and #35.

Objected to on the ground that the answer could be nothing but the expression of opinion on the part of the witness. Submitted that witness should state facts upon which the opinion is based and not the opinion.

Q. In a general way, as General Passenger Agent of this Railroad, just state facts; state in a general way and the details
141 and your reasons for it, based on points of your own knowledge, the necessity of running trains #32 and #35 as fast trains for the purpose of handling through travel and the United States Mail?

Ans. I have spoken of the contract which we have for handling the United States Mail. As to passenger traffic, the public demands fast limited service. This is especially true of the Florida tourist travel. With the building up of resorts like Charleston, Augusta, Camden and the Florida resort- these people, this travel, demand high class limited trains. The Atlantic Coast Line was the pioneer in this character of travel, having operated these fast trains years before we had the competition of the Southern and Sea Board. The tourist would not use slow or indifferent service. He will seek other resorts and other sections that afford him these facilities and accommodations. The tourist in New York, looking for a place to spend a few weeks or months in winter, has available the resorts of the Gulf Coast, California, Texas, Mexico, to say nothing of the splendid facilities offered by the Steamship routes to the Bahamas, and Nassau, and other points. Unless we can offer the facilities of fast, through service the Southern resorts would not be considered by him. I will state that this business has developed to such an extent that, whereas, the Atlantic Coast Line ye..rs

back was the only Railroad that handled this character of traffic. We now have the strong competition of the Southern Railway and the Sea Board Air Line, which, by the way, is a shorter route in distance and which makes faster time than the Atlantic Coast Line does between New York and Jacksonville. This has forced us to keep our trains up to the highest standard to control our share of this important and lucrative travel.

Q. Could that business, Mr. Craig, be taken care of if trains #32 and #35 were made slower trains by frequent stops?

142 Ans. No sir; They would seek other lines undoubtedly.

Q. Would there be any necessity for these trains for the purposes described by you if they were not fast trains?

Ans. No, sir, and we are compelled, during the height of the season to add other trains,—trains 37 and 38 known as the New York and Florida special.

Q. What time do they run?

Ans. They run from about the 10th of January to the middle of April,—during the height of the season. To show you just what a factor this through travel is to the Atlantic Coast Line during the month of April, north bound train No. 32 averaged one hundred through passengers between Jacksonville, Fla., and Richmond, Virginia.

Q. Would there be any necessity to have the fast trains # 32 and # 35 equipped as they are equipped if it was not for the through travel?

Objected to as calling for an opinion of the witness.

Ans. With the increased wealth of the country and the building up of the additional resorts, as I have stated, in the central south, the travel has wonderfully increased. We are handling a large number of people to Charleston, Augusta and some to Camden; and we have recently opened up a resort at Pinewood, near Orangeburg, that is attracting quite a number of Northern tourists. We find from our experience in Florida that the tourist will not take the local train service that stops at the various local points in Florida, I mean that makes a stop at every point on the route; but they insist on our stopping these through trains for their accommodation.

Q. If you did not have the through travel would trains # 32 and # 35 be necessary simply for the purpose of accommodating the local travel.

Objected to as calling for an opinion of the witness.

Ans. No, sir, they would not.

143 Q. Is there any difficulty in maintaining the fast schedule of #32 and #35?

Ans. There is great difficulty I am sorry to say.

Q. Is it necessary to maintain that schedule?

Ans. It is absolutely necessary to do it on account of the mails. Several complaints have come to us from the P. & O. Steamship Company on account of the delay in #35 reaching Port Tampa, stating that they were unable, with the frequent delays of this train,

to maintain their schedule for the delivery of the mail to the Cuban Railways and Havana.

Q. What is the equipment of those trains?

Ans. In order to maintain the high speed of those trains they do not handle express, they handle only mail; the most limited second class accommodations, not exceeding twenty; a first class coach and in the winter time, from six to seven Pullmans, with a Pullman dining car. It will be seen that this is strictly a first class train and operated on those lines for the accommodation of this tourist travel,

Q. But for the through travel could that train be operated without loss?

Ans. No, sir, not according to my judgment; I don't think it could be.

Q. I am speaking of the train as equipped?

Ans. No, sir, absolutely could not be.

Q. What was the purpose of putting a dining car on the train?

Ans. The tourist- just demanded the best service we could give them. That dining car service is operated at a big expense to the company every month.

Q. You say the dining car service is operated at an expense?

Ans. Yes a big expense.

Q. But the service was demanded by the tourists?

Ans. We have to maintain it at a big expense. We cannot curtail the Pullman people, who operate the car for us in their
144 menu,—the tourists requiring this service to be of the highest class.

Q. Does the dining car service serve any purpose in regard to increasing the speed of the train?

Ans. It serves to decrease the speed of the train. I mean its weight. Of course, it adds one car to the train but it saves the meal stops.

Q. What were the meal stops before the dining car service was introduced?

Ans. They were generally the meal stops from twenty to twenty-five minutes.

Q. Now the dining car service saves those stops?

Ans. Yes, sir; and enables us to reduce those stops to very short periods.

Q. For only necessary purposes?

Ans. Yes, sir.

Q. You avoid the stops so far as meals are concerned?

Ans. Absolutely.

Q. What set of trains are # 39 and # 40?

Ans. Local trains which are provided for the local travel. They are operated through from New York to Port Tampa, Florida.

Q. What kind of trains are they as to their equipment?

Ans. They are equipped with first and second class cars,—with full first and second class cars, and through Pullman sleepers, mail, express and baggage cars.

Q. Daily trains?

Ans. Operated daily each way.

Q. Mr. Craig, do you know the passenger accommodations that are afforded the people at Clio and Latta, South Carolina?

Ans. Yes, sir.

Q. I would be glad, Mr. Craig, if you would locate yourself mentally, at Clio, S. C., in the early morning and trace the train service from that point during the day. That is to say, I wish you would take it up this way; I wish you would take the first passenger train out of Clio, S. C., and follow that train during the entire
145 day, giving the arrival and departure of that train from any point and show the connections that can be made by that train at every point, where it stops to take on and put off passengers?

Ans. I have prepared here for my special reference a crude map of the schedule from Clio to all points served by the Atlantic Coast Line; and I have drawn in red the train service showing the A. M. departures from Clio, and in blue the P. M. departures from Clio. Leaving Clio at 7:00 A. M. arrive at Latta 7:45 A. M. (I am following the red line now), arrive at Dillon 8:05 A. M., arrive at Pee Dee 8:55 A. M.; arrive at Florence 9:35; arrive at Charleston 1:20 P. M.; arrive at Savannah 6:45 P. M., leaving Savannah 6:55 P. M.; arrive at Waycross 10: P. M.; arrive at Montgomery at 8:05 A. M., serving intermediate points. At Montgomery prompt connection is made in the Union depot for New Orleans, Pensacola, Mobile, and Texas points and also for points on the Mobile and Clio Railroads and the L. & N. North of Montgomery. I have given the arrival at Waycross at 10:00 P. M., leaving Waycross at 10:00 P. M. arrive at Tifton at 11:45 A. M., where through service is available to Atlanta and the West. The train arrives at Albany, Georgia, at 2:15 A. M.

Leaving Pee Dee at 10:22 A. M. connection is made at Chadbourn for Conway, arriving there at 1:50 P. M.; continuing arrive at *at* Wilmington at 1:20 P. M. connection being made at this point for New Bern and intermediate points. I have quoted the arrival at Florence at 9:35 A. M. Leaving Florence 9:45 A. M. arrive at Darlington 12:35 noon, at Hartsville 1:45 P. M., arrive at Cheraw 11:29 A. M., Wadesboro 12:30 noon.

Leaving Latta at 10:30 A. M. arrive at Fayetteville 12:25 noon, where connection is made for Sanford, and points on the Southern Railway and through Greensboro and beyond; also for points between Fayetteville and Wilmington; continuing; this train arrives at Richmond 7:45, P. M., Washington 11:40 P. M., Balti-
146 more 1:43 A. M. Philadelphia 4:25 A. M. New York, 7:15 A. M.

Leaving Darlington at 10:30, A. M., arrive at Bennettsville 12:45 noon, and going on arrive at Fayetteville at 7:15.

Q. Mr. Craig, I would like for you to give the connections made in the same way at various points by the train leaving Clio in the afternoon?

Ans. Leaving Clio at 4:30 P. M., arrive at Latta 6:05 P. M., arrive at Pee Dee at 8:05 P. M., arrive at Florence 7:55 P. M., arrive at Sumter 9:30 P. M., arrive at Columbia 10:55, P. M.

Leaving Florence at 8:15 P. M., arrive at Darlington 8:45; Ben-

nettsville, 9:40 P. M., Gibson 10.30 P. M. arrive at Hartsville 9:30 P. M.

Leaving Pee Dee at 8:37 P. M., arrive at Wilmington 11:45 P. M. Leaving Florence at 8:25 P. M. arrive at Charleston at 11:40 P. M., Savannah 2:40 A. M., Waycross 6:05 A. M. Jacksonville at 8:40, serving intermediate points, arriving at Port Tampa 7:25 P. M., arrive at St. Petersburg, Fla., serving intermediate points, at 9:35 P. M., arrive at Miami, Fla., serving intermediate points, at 7:20 P. M.

Connection is also offered from Union Station at Jacksonville for all points on the Sea-Board Air Line in the State of Florida. Continuing the service from Waycross at 6:35 A. M., arrive at Montgomery 6:15 P. M., serving intermediate points. At Montgomery the same connections are afforded at Union depot for New Orleans, Texas, Mobile, and points on the L. & N. Railroad North and South of Montgomery on the Mobile and Ohio Railroad.

Parties from Clio and Latta can also avail themselves by train # 32 for Fayetteville, Wilson, Rocky Mount, Richmond, Washington, Baltimore, Philadelphia and New York by taking the schedule shown at Florence, and boarding train # 32 at Florence; train # 32
147 leaves Florence at 8:00 P. M. arrives at Richmond at 4:07 A. M., Washington 7:54, A. M., Baltimore, 9:09 A. M., West Philadelphia 11:22, A. M., New York at 2:00 P. M.

Q. Is it not a fact that in addition to the connections you have described on the afternoon, leaving Clio and going to Florence, S. C., that after the arrival of train No. 35 at Florence connection can be made for all points South and West via Charleston, Savannah and Augusta, leaving Florence at about 4:00 o'clock A. M.?

Ans. Yes sir.

Q. Is it not a fact, Mr. Craig, that the only one connection that is not made either in the morning or afternoon by the train you have described is the train which leaves Florence at 8:00 A. M. for Columbia, S. C.?

Ans. That train only runs to Sumter but it affords connection at Sumter.

Q. Is or not that the only train that the two trains you have described do not make connection with?

Ans. Yes sir.

Q. What additional expenses are passengers going North put to if on leaving Latta they prefer going North on No. 32, rather than by No. 40?

Ans. Leaving Clio or Latta in the afternoon, connection is afforded at Florence with train No. 35. The additional cost would be $1.42 above what the rate from Latta to New York would be; in other words; parties can go from Latta to Florence and board train No. 35 at an additional cost of only $1.42 above the price of a ticket from Latta to New York. The following connections are afforded to Clio taking the noon arrival: Leaving New York at 9:25 A. M., Philadelphia 11:55 A. M., Baltimore, 2:12 P. M., Washington 3:25 P. M., Richmond 7:25 P. M. arrive at Dillon 3:05 A. M.

Parties can leave here arriving at Latta at 11:15 A. M., Clio 12:45,

noon. Leaving Wilmington at 6 A. M., arrive at Pee Dee 9:05 A. M., arrive at Latta at 10:30 A. M., and Clio at 12:45 noon.

Leaving Port Tampa at 8:25 A. M., Jacksonville at 8:05 P. M., Waycross at 10:10 P. M., Savannah at 1:35 A. M., Charles-
148 ton at 6:15 A. M., Lanes 8:05 A. M., Florence 9:45 A. M., and arrive at Latta 12:45 Noon.

Connection is made at Jacksonville with the above train from Fort Meyers, Florida, St. Petersburg, Florida, and from all points on the Seaboard Air Line in that State.

Leaving Brunswick at 4:10 connection is also made with this through train at Waycross. Leaving Albany at 2 P. M. connection is also afforded at Waycross with this through train.

Leaving Montgomery at 6:50 A. M., where connection is made from all points in Texas, Louisiana, Mobile, and Pensacola and points to the East and West thereof, arrive at Waycross at 6:05 P. M., connecting with this through train 40, arrive at Clio at 12:45 M. Leaving Columbia at 6:45 A. M., Sumter at 8:10 A. M., arriving at Clio 12:45 M. Leaving Gibson at 6 A. M., Bennettsville at 7:05 A. M., Hartsville at 7:05 A. M., Darlington 7:50 A. M., you reach Clio at 12:45 M.

For the P. M. Arrival at Clio 10:05 P. M., the following connections are reported: Leaving Port Tampa, Fla., at 7:25 P. M., Fort Meyers 2:45 P. M., you reach Jacksonville at 7:55 A. M. Leaving Jacksonville at 8:50, A. M., Brunswick at 6:10 A. M., Savannah at 1:05 P. M., Charleston at 5:20 you arrive at Florence at 7:50 P. M., connecting for Clio at 10:05 P. M.

Leaving Columbia at 4:55 P. M., where connection is made with through train from Greensville, S. C. and intermediate points and with all points on the Southern Railway north of Columbia, you reach Clio at 10:05 P. M.

Leaving Augusta at 2:25 P. M., where connection is made with through train via. Atlanta from all points West you reach Clios at 10:05 P. M. serving intermediate points like Denmark, Orangeburg, Sumter, etc.

Leaving New Bern, N. C., at 9:10 A. M., Wilmington at 3:45 P. M., where connection is afforded to all points North of
149 Wilmington, you arrive at Clio at 10:05 P. M.

Leaving Conway at 2:50 P. M., you reach Clio at 10:05 *O*. M. Leaving Wadesboro at 4:10 P. M., Cheraw at 5:10 P. M., Darlington 6:24, P. M., Hartsville 4:15 P. M., arrival is made at Clio at 10:05 P. M.

Leaving New York at 9:25 P. M., Philadelphia 12:15 at night Baltimore 2:37 A. M., Washington 4:30 A. M., Richmond at 9:05 A. M., and intermediate points arrive at Clio at 10:05 P. M.

Leaving Albany, Ga., at 2:15 A. M., connection is afforded with train # 32 which would provide for arrival at Clio at 10:00 P. M.

It is impossible for me to give all the connections that are afforded by these trains at intermediate points. For instance, at Richmond, with diverging line at Columbia and Savannah and Charleston; and the same may be said at other junction points, where connections are afforded.

Q. Mr. Craig, is your general testimony on this subject of connections shown on these two maps you have prepared?

Ans. Yes sir, there has been just one mistake which you pointed out to me that I have not shown and that is that Bennettsville connection which I could put in and that Conway connection which I have over-looked.

Defendant introduces maps which are marked Exhibit "A" and "B."

Q. In describing these connections that are afforded to Clio, S. C., are not all the connections you have described also afforded Latta, S. C.?

Ans. Yes sir.

Q. Do you know the last census population of Latta, S. C.?

Ans. Yes sir, I have it taken from the United States Census, a copy of which I have. The population according to the census of 1900 was 453.

Q. What was the population of Clio?

Ans. 508.

150 Q. What is the population of intermediate points between Clio and Latta?

Ans. The only point shown is Dunbar, 115 people, the United States Census report showing that the other points are less than 50 population and are therefore not given.

Q. What is the census population of Kingstree, S. C.?

Ans. 706 people.

Q. How many passenger trains a day in all directions afford to the people of Latta, S. C., an opportunity of going off by boarding a train?

Ans. Eleven.

Q. The following trains arrive at Latta from Clio: At 7 A. M., 6:05, from all points South, 10:30 A. M. from Dillon 7:50 A. M., Pee Dee and points beyond 9:35 A. M. and 9:05 P. M. The following trains depart from Latta: For Clio 11:15 A. M., and 9:18 P. M., 7:01 P. M., for Wilmington and points South and West; 8:30 A. M., Pee Dee and points beyond 7:40 P. M., for Pee Dee and points beyond. In addition to which there are two local freight trains provided with passenger service leaving Latta at 9:00 A. M., for Fayetteville and intermediate points and at 7:01 P. M., for Florence and intermediate points.

Q. What is the census population of Marion, S. C.?

Ans. In 1900, 1831.

Q. Isn't it a fact that the only accom-odation afforded at Marion, S. C., is a local passenger train each way twice a day?

Ans. There is only a double daily service at Marion.

Q. You have described No. 35 as leaving New York at 9:25 A. M.?

Ans. Yes sir.

Q. In the movement of that train South please let us know how many points larger than Latta, S. C., and the census population of each point, at which this train No. 35 does not stop?

Ans. Rahway, N. J., 7935, people; Metuchen, N. J., 1786; New

Brunswick, N. J., 2006; Morrisville, Pa., 1371; Bristol, Pa.
151 7104; Darby, Pa. 3429; Glenolden, Pa. 873; Norwood, Pa.,
1286; Moores, Pa. 1050; Ridley Park 1234; Chester, Pa.,
339888; New Port, Del., 657; Elkton, Md., 2542; North East, Md.,
969; Perryville, Md., 770; Havre de Grace, Md., 3423; Aberdeen,
Md., 600; Benning, D. C., 500; Manchester, Va., 9715; Elm City,
N. C., 560; Smithfield, N. C. 764; Hope Mills, N. C., 881; Kings-
tree, S. C., 760; Lake City, S. C.,——

Q. Now please name the junction point at which you do not stop;

Ans. We do not stop at the following junction points between Richmond and Jacksonville, Fla., on the Atlantic Cost Line with trains 32 and 35; Chester, Va., Pender, N. C., Smithfield, N. C., Hope Mills, Parkton, N. C., Elrod, N. C., Contentnea; Latta; Pee Dee; Ravenels; Green Pond, S. C.; and Hortense, Ga.

Q. Mr. Craig, please give us explanation of the stops of 32 and 35 between Richmond and Charleston, S. C.?

Ans. Petersburg, the first stop South of Richmond being a commercial center; Emporia the next stop, 63 miles from Richmond on account of its being a railroad crossing; Weldon, 83 miles, it is a junction point, and Rocky Mount, 120 miles, a large town; South Rocky Mount, we change crew and engine and inspect the train; Wilson, N. C., a large town, and to afford connection from Wilmington and intermediate points; Selma, N. C., a Railroad Crossing, Dunn, N. C., a flag stop; at Fayetteville, N. C., we stop for water and to inspect the train, is also a large town; Dillon, S. C., a flag stop; Florence, S. C., to change engine and crew; Lanes, S. C., a junction with the Georgetown and Lane's Railroad; Charleston, S. C., a commercial center; Yemassie, a Railroad Crossing; Ridgeland, a water stop; Lane's is also a water stop; and mail for Georgetown and western railroads. Leaving Charleston on train 32 the first stop is Lane's,—stops as a railroad junction and for the mail and water;
Florence changes engines and crew and inspect the train;
152 Dillon, flag stop; Fayetteville, a water station and inspection;
Dunn, flag stop; Selma, railroad crossing; Wilson large town;
South Rocky Mount, change engines and crew, Rocky Mount, large town; Petersburg, commercial center; Richmond, end of run. The stop at Rocky Mount is made to make connection with the numerous branches the Atlantic Coast Line have at that point.

Q. What roads go in to Petersburg besides the Atlantic Coast Line?

Ans. The Norfolk & Western and Seaboard Air Line.

Q. Mr. Craig, it has been testified to in this case that there was a request made of the Atlantic Coast Line Railroad that you put coupon tickets on sale at Latta, S. C., and that the promise was made that it would be done and that the promise had never been carried out?

Ans. We have on sale at Latta in addition to local tickets, interchangeable mileage tickets, local and special baggage checks, local prepaid order coupon tickets to all points on the Southern Railroad, via, Selma; coupon tickets to Washington, D. C., and coupon tickets to all points on the Pennsylvania Railroad, via. Washington. This in addition to a full supply of local tickets that are available to any

points on the Atlantic Coast Line throughout its entire mileage; also ministerial tickets, round trip tickets, etc.

Q. Is that a fair supply of tickets for ordinary travel?

Ans. Much more than you use.

Q. Since when were those tickets put on sale?

Ans. The mileage tickets left this office September 14th, 1904; the coupon tickets left this office September 13th, 1904.

Q. I would like to ask you Mr. Craig, what fixes the schedule or leaving time of "32" in leaving Port Tampa?

Ans. It is fixed by the arrival of the P. & O. Steamship from Havana and Cuban points.

Q. How do you account for the schedule of "32" through
153 the State of Florida, being slower than at other points if it is?

Ans. The departure from Port Tampa being fixed with relation to the arrival of the P. & O. Steamship bringing the Cuban Mail, the departure of "32" is also fixed at Jacksonville, Fla., by the same cause, viz:—The mail of the Steamship Company through its Miami service—"32" being scheduled to leave Jacksonville immediately upon the arrival of the Florida East Coast train "98," bringing the mail from Miami. An examination of the schedule of the arrival of the P. & O. Steamship both at Port Tampa and at Miami will show a certain amount of Leeway. This is necessarily on account of the uncertainty of ocean travel. Their service with regard to the time cannot be fixed exactly and then there is considerable time necessary for the proper examination of baggage by custom house authorities. This sometimes consumes as much as two or three hours.

Q. I have not asked you the details of the stops made by No. 32 and No. 35 south of Savannah with the same exactness as I have asked you concerning the stops made between New York and Savannah, if these stops below Savannah are the same character as the stops North of Savannah, I would be pleased for you to so state if there is any difference in the character of the stop, I would be pleased for you to so state and give your reason for the same?

Ans. Train No. 35 bringing as it does, tourists from the North must of necessity, begin its distributions of these people after its arrival in this Southern territory. I recall a stop at Ridgeland, S. C., and Ways, Ga., where there are large clubs owned and controlled by Northern people who come South in winter for shooting and recreation purposes. Some of the stops between Savannah and Jessup are made necessary by local condition,—there being no morning departure from Savannah that will enable these people to reach these points.

Q. Mr. Craig, from a standpoint of an expert in your line
154 what would you say *after* the passenger accommodations afforded at Latta, S. C., as compared with other smaller points.

Objected to, first because it has not been shown that Mr. Craig is an expert; second, that it is not a matter of expert testimony and the witness should be confined to a statement of facts leaving the matter of the efficiency of the service to be determined by the Court.

Q. What road are you General Passenger Agent of?

Ans. The Atlantic Coast Line Railroad.

Q. What experience did you have in that department of railroad work before you came to the Atlantic Coast Line?

Ans. I have been in the General Freight and Passenger office for about twenty-one (21) years.

Q. How long have you been with the Atlantic Coast Line?

Ans. I have been here in this position for over three years.

Q. Now please go on and answer that question I asked you?

Ans. I think the service at Latta is ample to meet all the conditions of travel.

Q. As compared with other smaller points?

Ans. I think it enjoys superior transportation facilities over similarly located points.

Q. As compared with Marion, S. C.?

Ans. It has better passenger accommodations.

Q. As compared with Kingstree, S. C.?

Plaintiffs' counsel objects to this line of examination on the grounds that it calls for the opinion of the witness.

Ans. It has better passenger condition-. It has more frequent train service than Kingstree.

Q. Isn't it a fact that that would apply over the entire system?

Ans. That is a hard question to answer.

155 Q. Considering the passenger accommodations at Latta, S. C., isn't it a fact that the passenger facilities at Latta are better than at points similarly located of the same size and even larger points?

Ans. It has undoubtedly. I have before me here a statement prepared of all the branch services on our system and from that statement the service is undoubtedly as good as the best and better than a large majority of them.

Counsel for plaintiff- objects to the foregoing questions as to the efficiency of the train service at Latta on the ground that it is the opinion of the witness.

Q. What is the importance of "32" and "35" relative to such trains on other roads? I desire to know if that is a very important train by reason of the length of its run as compared with other roads? Is it, in other words, a *cert* short train considering the distance it travels or a very long train as compared with other through lines in the United States?

Ans. The Florida & West India Limited Trains "32" and "35" form one of the longest continued schedule trains in the United States. The distance is something over Twelve Hundred Miles, exceeding the distance from New York to Chicago. I think it ranks as one of the fastest and longest continuous trains in this country.

Q. How about its equipment?

Ans. It ranks with the very best.

Q. Have you any other trains equipped as well as #23" and No. 35, unless they are used as through trains?

Ans. No sir, trains #32" and "35" is one of th heaviest trains

run in the United States. I mean by heavy, it carries a larger number of cars.

Q. I understand you to say it was necessary for the continuance of those trains for a very fast schedule to be maintained,—is it a very difficult thing to maintain the schedule as required?

Ans. It is a very difficult matter.

156 Q. Can you answer this question? If trains No. 32 and No. 35 were required to stop in its run at Latta, S. C., and points similarly situated what would be the increased length of the schedule?

Ans. I think you had better ask that question of Mr. Borden. He is a practical man that operates that department and can give you the details better than I *cna*.

Cross-examination:

Q. In giving the figures from the United States census as to the populations of Latta, Clio, Marion and other towns, those figures include merely the inhabitants living within the incorporate- limits?

Ans. They are gathered from United States Census and I imagine they are those in the incorporate- limits only.

Q. And does not include the people in the surrounding country?

Ans. No sir.

Q. You state that trains #32 and #35 stop at Dillon, Florence, Lane's, Charleston, Yemassee, Ridgeland and Hardeeville in South Carolina, do they take and carry local passengers between these points?

Ans. We would carry passengers.

Q. To and from these points?

Ans. Yes sir. I do not think we would to Yemassee. I do not think we stop at the station at Yemassee. You must understand that while law forces us to stop at Yemassee it does not force us to take passengers except people would board the train any how. At Hardeeville we stop to register and passengers would board the train there whether we sold them tickets or not.

Q. Train No. 35 going South stops at the station at Burroughs, McIntosh, Walthourville, Ludowici, and Jessup? Owing to local condition there being no other morning train out of Savannah, I believe that is the reason?

Ans. That is one of the reasons. So far as Ludowici is concerned, that is a crossing where we are compelled by law to stop.

157 Q. It does local business between these stations?

Ans. I would prefer Mr. Borden to answer that question when he gets on the stand. We handle that business on "35" but not on #32.

Q. I believe you have already stated that South of Jacksonville, between Jacksonville and Port Tampa, both #32 and #35 make all the local stops?

Ans. Thirty-five makes practically all.

Q. And does the local business there?

Ans. They are nearly all flag stops.

Redirect examination:

Q. Have you any further explanation other than you have already made as to stops made by #35 in Florida?

Ans. Thirty-five does an enormous business in Florida,—very much larger than it does through the Carolinas.

Q. Have you a report of the passenger tickets sold at Latta?

Ans. I have it here ready.

H. M. EMERSON, a witness for Defendant, being duly sworn testifies:

Direct examination:

Q. What is your business?

Ans. I am Traffic Manager of the Atlantic Coast Line Railroad Company.

Q. How long have you been with the Atlantic Coast Line?

Ans. With the exception of six months since 1876.

Q. Have you any reasonable familiarity with the running of trains #32 and #35 on the Atlantic Coast Line?

Ans. Yes sir.

Q. What is the primary object of those trains as distinguished from other trains?

Ans. They are what we consider through trains used to accom-odate long distance travel.

Q. What is the relation of those trains to the United States Mail?

158 Ans. They carry mail, not only to our local territory, but to the section of country served by our line, including the Cuban Mail.

Q. What is the necessity, so far as the Atlantic Coast Line Railroad is concerned, for running this train?

Ans. With your permission, I will go back to about the time these trains were inaugurated. That was sometime in '90 or '92, I think as for #32 and #35. Our first effort, and when I say our first effort I refer to the effort of the Atlantic Coast Line to accom-odate or take care of the Florida travel and the travel through the larger South Atlantic Cities, also to accom-odate the mail. We operated what was known as No. 27, south bound. That train was in its day, possibly the fastest train that had ever been up to that time operated in the South. There was in the mind of the transportation people a chance to develop a tourist business in the South-east Georgia, and the lower part of South Carolina, especially and Charleston; And it was hoped that that business would not only pay the transportation line a revenue for the expense of its equipment but also aid in the development of that section by the distribution of money which they might spend during their stay in that territory. It would also attract attention to the favorable climatic condition and the soil to the raising of early vegetables, which was at that time, on an extremely limited scale. In possibly '86 or '85, although the Atlantic Coast Line at that time was by far the shortest route to the south, and when I refer to the South I mean the territory served by this line and its connection at that time south of Charleston, the owners

of the property decided to build what is known as the Short Cut and on February 16th, 1902, that line between Contentnea and Pee Dee, S. C., was completed, and on March 26th, of the same year the line was opened for business. As I have already stated at that
159 time, the Atlantic Coast Line was the short line between Florida and Southern Coast Cities and New York and our great commercial Cities in the East. Prior to that time, a Steam Ship Company had been organized for the purpose of operating a steamer line between Port Tampa on the West Coast of Florida and Havana, Cuba. There was little or no travel or traffic between the Island of Cuba and the State of Florida; but there was quite a movement between Havana and New York and the East. Up to the time of the establishment of this steam ship line to which I have referred, the freight and passenger movement was altogether by steamer direct. When I mentioned the fact that there was little or no travel or movement of freight and traffic between Florida and Cuba it was to bring out the points and the establishment of the Steamer Line rested upon the establishment of some Rail schedule to this eastern territory. The Plant System, Atlantic Coast Line, or at that time the road forming what is now the Coast Line, the Richmond, Fredericksburg, Potomac and Washington, reaching from Richmond to Washington formed what was known as a through passenger line under an agreement which provided for the operation of these fast trains to serve, I might say, Florida and Cuba, incidentally, Charleston and Savannah, for without this development which we hoped for in Florida and Cuba the line could not be maintained if stopped at Charleston. There was not sufficient business in the movement between the East and Charleston to justify the operation of such fast trains. Therefore the stock-holder of the Atlantic Coast Line property realized the importance of the fastest schedules between Charleston and the territories south thereof, including Cuba*m* and Eastern Cities, not only to secure the passenger and freight traffic but to improve the mail service as against Coastw*ays* St-am Ship competition and also as against the threatened competition through the building of shorter rail lines between t*ge* sections named and recognizing the importance of quick transportation and shorter mail route as an important factor in the development of the territory described, the people of said territory depending
160 largely on eastern markets for the consumption of their farm products consisting of fruits and vegetables, they therefore decided to build this Short Cut*t*, one hundred and forty-one (141) miles, thereby shortening the distance and reducing the time. There has been a local development along that line which was expected. The building, however, of the line was primarily for the purpose of shortening the distance so as to reduce the time between the sections connected. In that connection, I would like to refer to the General Manager's report at the stock holders' meeting, November, 1891: "In Feburary, 1891, contracts were let for the completion of what is known as The Cut Off and this important branch will be opened in January. This branch, in connection with the Florence Railroad and the other road comprising the Atlantic Coast Line, will constitute the shortest practicable route between New York and Charles-

ton. In November, 1892, the General Manager reports to the stockholders as follows: "The closing of this gap completes what is known as the Short Cut, a line of 140 7/10 miles in length extending from Contentnia station on the Wilmington & Weldon Railroad to the Great Pee Dee River on the W. C. & A. Railroad. The completion of this line shortens the distance between Richmond and Charleston 61.2 miles. Through trains will be diverted during the coming winter." Now in the report to the Stock-holders made by the General Manager and the only report that touches on the building or completion of this Short Cut there is no mention whatever made as to local service or local territory served by this Cut Off but the one thought in their minds from these reports was the question of shortening the distance as between New York and points beyond their own line. Now in arranging a fast through passenger service between New York and Cuba, there are practically two controlling factors:

161 First, the depart*ment* of the Steamer from Port Tampa, at which point the Rail line ends, and the water route begins; and that time is practically fixed by the necessity of arriving at Havana in time to connect with trains for the interior points and thereby avoid the delay to mails and passengers destined to interior points on the Island. The leaving time from New York depends upon the time the Pennsylvania Road can serve that train with prompt ferry connections from the New York City side to the Jersey City side and at the same time send it out of the Jersey City shed and not disarrange schedules for their numerous trains for the North, East, South and West. When these schedules are considered in the fall and spring, we are compelled to accept such time as the Pennsylvania Company will fix for leaving New York and arriving at Washington and leaving Washington and arriving at New York. The present leaving time of No. 35 is anything but satisfactory, to us. In winter time, when our heaviest passenger business is moving the hour is entirely to- early. Passengers living in the upper part of the City and as you know, that represents the residential portion of the City and down town being the business portion of the City, are compelled to get up before day, so as to reach West 23rd Street Ferry in time to take our No. 39 train South. It is not a satisfactory train out of New York. As it comes south, however, the time growing later, it reaches Philadelphia and connects there with the large number of points in the upper part of the State above New York and Pennsylvania served by the Reading & Lehigh Valley R. R. and the Penn. R. R. Should we undertake to leave New York later than the present schedule, we could not connect with the ship at Port Tampa. It would be impossible for us to make that connection, there being a margin of only ten or fifteen minutes on the present schedule. The same condition practically governs the North bound with this exception: That No. 32, which is the companion

162 train leaves Jacksonville after the arrival of the two Steamer trains, one from Port Tampa over our line, and one from Miami over the Florida East Coast Road. Since the establishment of a Steamer Line between Port Tampa and Havana, there has been established a line between Miami and Havana. Both of those lines

serve Key West. There is also a Steamer Line from Miami to Nassau,—to Nassau in winter months. The trains from Miami and Port Tampa are scheduled to leave,—making connection with the boat and connecting at Jacksonville in time to connect with No. 32 leaving there. The Importance of improving our present schedule on the two trains in question is now receiving very serious consideration at the hands of our people. There are possibly two ways to accomplish it, one to reduce the number of stops the trains are now making or reduce the size of the train. The last, of course, does not appeal to us from a transportation standpoint. We feel that while we are operating this train we should provide a sufficient number of sleepers and through coaches to accommodate this long distance travel offered.

At the time the through service was first inaugurated by the Atlantic Coast Line from between the East and Florida Coast we were practically the only line operating a through fast line or through sleeping car,—The Atlantic Coast Line was many miles shorter than any other Rail route to that territory. At present the Sea Board Air Line is a shorter route between said sections and the Southern Railway only a few miles longer. Within the last three years, we have placed dining cars on these trains, the main purpose being to save a few minutes heretofore lost at meal stations; and we are operating those dining cars at an actual loss. It may be shown from the records that not two months out of twelve do they show net and the other months running as much as Fifteen Hundred to Two Thousand Dollars per month behind.

163 Competition has became so keen, the schedule of through trains shortened, the demand for extraordinary fast service between distant points so pronounced, that a transportation line desiring to enjoy any long distance competitive travel or have any standing whatever as a through passenger route must operate trains with schedules and through car service and arrange time you may say exclusively for through passengers, thereby necessarily, restricting any local movement. To show how far that feeling has gone with the travelling public, because the transportation people are trying to meet the demand of the travelling public, I would mention the schedules between New York and Chicago, for they have had a twenty hour schedule train keyed up to the highest notch, it would be supposed, yet they have undertaken to reduce it two hours. That seems a very small margin of time but it is felt to the extent if one line makes a change the other lines must necessarily follow or give up a large percentage of their New York and Chicago travel. Now these trains are not run because the transportation people want to run them but simply because the public demands it. The day is here for quick and fast movement. Cities heretofore considered far apart have been, by these fast trains, brought very closely together. If we should undertake to provide local service, such as is contemplated by the complaint with train- No. 32 and *Mo.* 33 we would absolutely destroy their value as through trains, and without that travel these trains would, of course, be operated at a loss. Our local schedules at this time are all that is necessary to take care of

the local travel. It would simply mean discontinuing No. 32 and No. 35. Their usefulness would be gone. When we selected a name, and I refer to the line between Washington and Port Tampa, at that time the Plant System and the Atlantic
164 Coast Line Railroad System and R. F. P. & Washington Souther-, we endeavored to fix on a name that would not only describe the service but also the territory to which we expected to give preferential attention with these trains and therefore the name selected was: The Florida & West India Limited, Limited as to speed, operated primarily for the purpose of serving Florida and Cuba. The importance of a satisfactory through fare of travel between Cuba and this country, and the markets of this country,—and at present a Cuban knows only the eastern market—is very great. With the old arrangement, where *we* has to leave Havana, by ship and land at New York and possibly spend a few weeks at Saratoga, he was not informed and had possibly no opportunity of informing himself as to the possibilities of this coun*rty*, certainly not of the southern county. We have not only undertaken to overcome that by these fast trains offering him practically a land route from Havana to New York and the east but we have, at considerable expense, established an Agency in Havana, Cuba. We have one of the best men we could secure representing us on the Island. We hope not only to increase our passenger movement with these through trains but we hope to assist in developing the joint commercial interests which must necessarily, for the salvation of that Island, assist between the Island and this country. Up to a few years ago Cuba bought practically all the cotton goods they used from England. The small percentage furnished by this country was hardly noticed. We hope to change these conditions. Our efforts are in the direction of commercial education as far as that section of the country is concerned. We have got to have something coming in to assist us in this work. Destroy the trains we have mentioned as through trains and our Cuban efforts are necessarily handicapped *is* not absolutely shut off.
165 In the present day when fast trains are no longer exception-, their value is determined not only by the Dollar that the trains may bring in from passenger standpoint but also by the increased mail facilities, and their value as an advertisement of the country through which those trains are operated. I mentioned a few moments ago competition. Thirty-two and Thirty-five are all the year around trains. During two or three months of the heavy tourist travel we operate another fast train, south bound and north bound. This train does not even carry the mail but the travel accommodation thereon demands fast first class equipment and the fastest possible schedule. From a traffic standpoint,—from the standpoint of net earnings to the company the value of No. 32 and No. 35 would be destroyed by converting them into local trains as contemplated by the complaint. I would strongly recommend their being discontinued. There is no place for them in that field. They are through trains, pure and simple. It is from the through long distance traffic handled on those trains that we get our money.

Now I am naturally as a traffic man, anxious to do anything I can do for the development of our local territory. That itself in the main important branch of the service and certainly represents 90% of the transportation problem. If we could create at all of our local points Cities that in some way grow up at competing points it would naturally be to our advantage to do so. If I could send one more farmer to Latta or to the Latta Branch or to Dillon, or to Fayetteville, it means more revenue to us in every way. They are consumers and in a number of cases producers. If we consider our service from the local territory along our line, we will say between Florence and the North, we have a train North and South bound that enables those people to reach the eastern Cities with one night out, leaving Latta about noon, arriving at New York the fol-
166 lowing morning early, Boston in the afternoon, returning, leave New York at 9:25 P. M., and arriving at home the following afternoon. The journey is one night out from Washington to New York on that fast train, the journey is one night out from Jacksonville to Savannah on this fast train and the journey is one night out on these trains in that territory we are anxious to serve and give everything we possibly can. But from our standpoint, if the travel from that section requires a service such as we are giving, or could give if we started these trains from those points on No. 32 and No. 35, then it becomes a question of not using No. 32 and No. 35 but establishing new trains. Now why is that so? Because using No. 32 and No. 35 for that purpose you absolutely destroy them,—destroy their value as such.

There is another thing about your through train and tourist travel that may have some bearing on this case and that is not only — importance of running a very fast schedule but the importance of limiting the stops. Now we all know you can get on a local train and some of our local trains run at a high rate of speed between two given points,—at a higher rate of speed possibly than our through trains brought about by the fact that they have to make these stops and their running time has been pushed up to the maximum, but the minute you undertake to make a long journey as between New York and Jacksonville or Tampa and get on a train of that kind, I don't care what speed she makes when she is running you say this is no through train, this is a local train. You have heard it on the trains time and time again. And when you stop your fast through trains for any purpose whatever you are criticised by the people who patronize such trains. They want to go on and go.

Q. In describing the through train, as an official of the Coast Line, are you sensible of any desire on the part of the
167 Coast Line to sacrifice local conditions?

Ans. Not for a minute. In fact the local conditions receive more attention at the hand of our people than the competitives condition.

Q. Do you not run local freight trains and through freight trains?

Ans. Yes sir.

Q. To serve different purposes?

Ans. Yes sir.

Q. Is not there the same parallel between through freight trains and local freight trains and No. 32 and No. 35 and local passenger trains serving local condition?

Ans. Yes sir. Take our through vegetable trains leaving Charleston at about 10.00 o'clock at night running during the season, that is, during the time the truck is moving in quantities,—in three to five sections out of Charleston alone. Those trains are not stopped for anything except wood, water and Railroad crossings and also transfer at certain junctional points at which we undertake to deliver to those trains some business coming in from branch line and business picked up at intermediate points. We look upon those trains and really they receive as much attention,—those through freight trains, as our through passenger trains; because they are put on with express purpose of taking care of a certain business and run,—you might say,—for that purpose alone. We have south bound and through trains, we have companion trains 212 and 210, they being south bound trains. They are fast through freight serving this far distance territory, bringing the Georgia man the upper Carolina man and, if you please, the lower Carolina man, as near the markets as enjoyed by his competitor or fellow merchant in North Carolina or Virginia,—those points being taken care of by another service entirely nearly as good as this service and many times much better than the service we can offer one who is at a far distant point and is served by through trains.

168 E. BORDEN, a witness for the Defendant being duly sworn testified:—

Direct examination:

Q. Mr. Borden, please state the character of your business?

Ans. General Superintendent of Transportation of the Atlantic Coast Line Railroad Company.

Q. Are you acquainted with trains No. 32 and No. 35?

Ans. Yes sir.

Q. Are they fast or slow trains?

Ans. Fast.

Q. Are they necessarily fast for their purposes?

Ans. Yes.

Q. Have you or not any difficulty in maintaining the schedules of those trains?

Ans. At times, yes sir, very great difficulty, and make the schedule under most favorable circumstances.

Q. If that train was stopped at Latta, S. C., and similar points during its entire run in your judgment, what would be the time in the increase of schedule between New York and Tampa?

Ans. The schedule time of train No. 39, a local passenger train, running between New York and Jacksonville and beyond is thirty-six hours and ten minutes. Train No. 35, which is a through train, stopping only at certain points, is twenty-nine hours and fifteen minutes.

Q. As compared with train No. 39 coming South, what would be the effect of stopping No. 35 at such points?

Ans. We would practically make No. 35 a local train and necessarily would consume a great deal more time to make the run.

Q. Could the through passenger business of the Atlantic Coast Line Railroad Company be effectively taken care of by stopping No. 32 and No. 35 at such points as Latta?

Ans. No sir.

Q. Can the local travel at points like Latta be effectively taken care under present conditions?

Objected to as an opinion.

Ans. I think so, that is based on what has been for the last ten years.

169 Q. Can you tell us why these trains stop at Emporia?

Ans. The prime object is to take water.

Q. Is there any difference between the stops of No. 32 and No. 35 at Emporia?

Ans. Yes sir, No. 32 stops for water and does not stop at the station.

Q. How about No. 35?

Ans. Thirty-five in stopping for water, places the cars right opposite the depot and as a matter of accommodation, I think they make it a flag station.

Q. One train in stopping for water is not located near the station and the other train stopping for water happens to be located at the station?

Ans. That is right.

Q. Do you know why the train stops at Dillon, S. C.,—the through train No. 32 and No. 35?

Ans. They stop at Dillon on account of the urgent request of that community and my recollection is that after repeated refusal and not withstanding it was very much against our desire and wishes but in view of the fact that they promised that they would stand between us and any further requests on the part of other communities it was finally agreed to.

Q. When you say "they," who do you speak of?

Ans. The Railroad Company. Mr. Garris. I am not positive whether he was Chairman or not.

Q. The question was asked Mr. Craig concerning a stop made by these trains in Florida, will you take that up and explain it?

Ans. Sout- of Jacksonville?

Q. Yes or south of Savannah?

Ans. Suppose you take South of Charleston. Up to July, 1902, south of Charleston, was the Plant System and when the Atlantic Coast Line acquired control of the Plant System they found certain conditions and customs and they have not been changed. Now for instance the stop at Ridgeland, we would be very glad to get

170 rid of that stop but it has been a long custom for trains to stop there and we cannot very well do it. In the same way train No. 35 did local work between Savannah and Waycross, espe-

cially so during the summer months after the Jessup short line was built. Up to the present time train No. 35 continued to do the local work or make local stops between Savannah and Jessup. Train No. 32 however, does not and only within the last few months we found it necessary to refuse or to decline to stop train No. 32 on signal at Ludowici.

Q. Is there any difference between the schedule of No. 35 in Florida in the present folder, say for July, and the winter schedule?

Ans. Until the present summer it has been customary to discontinue train No. 39 between Jacksonville and Port Tampa and require No. 35 to do the local work.

Q. How many stops did No. 35 make on your winter schedule in Florida, say south of Jacksonville?

Ans. Train No. 35 this past January between Jacksonville and Tampa made fourteen stops.

Q. What is the distance?

Ans. Two hundred and forty and 6/10 miles, of that there are four flag stops.

Q. How many are necessary for water and inspection and change of crews?

Ans. There is only one for inspection of cars and change of engine and crew and that is at Sanford, at which twenty (20) minutes is allowed for supper.

Q. They do not run a dining car south of Jacksonville?

Ans. Not a regular dining car. The old Plant System did have a couple of dining cars but they have been discontinued.

Q. How many of these stops are necessary for crossing and water?

Ans. I could not answer about the water and I don't know that I can answer about the crossing; though there are several down there. There are four draw bridges between Jacksonville and Sanford and one between Sanford and Port Tampa and certainly two
171 Railroad crossings.

Q. Do No. 32 and No. 35 make the Augustq connection?

Ans. Thirty-five does not, because we are unable to meet the figures of the Georgia Railroad. It would require a train to run so fast we found it was impossible to do it and while we used to reach Augusta at 8:15 and made connection with the Georgia road we now make it 9:15 and on account of our being almost invariably late the Georgia Railroad constantly complaining, we found it necessary to slow down the train and give up the conn-ction at Augusta.

Q. You could not run No. 35 fast enough to make the through connection to Atlanta?

Ans. Atlanta, Macon and Augusta, No. 32 makes the connection.

Q. Do No. 32 and No. 35 run altogether over the Coast Line?

Ans. No sir, they run over the R. F. & P. Washington, Southern and Pennsylvania.

Q. In arranging a schedule for No. 32 and No. 35 both as to time of leaving and speed of train are the wishes of the other road over which these trains run, necessarily involved?

Ans. The schedules of these trains are fixed at what are known as the General Time Convention at Washington, at which time and

place representatives of the Pennsylvania, and Washington, Southern, and Atlantic Coast Line, the Sea Board Air Line, the Southern Railway, the Chesapeake & Ohio, the Norfolk & Western, and Florida East Coast are represented.

Q. Could the Coast Line arrange a schedule for No. 32 and No. 35 regardless of the wishes of the Pennsylvania Railroad?

Ans. I will say this; I have for two years been trying to slow No. 32 down and requested at these conventions the Pennsylvania Railroad to receive the train from us thirty or more minutes late and their reply has invariably been, that the leaving time at Washington at 8:10 is the best that they can do for us under the present conditions. The time for No. 32 is fixed at Jacksonville by the ar-
172 riving time of the Florida East Coast and at Washington by the leaving time of the Pennsylvania Railroad.

Q. Do the various roads compete for the mail contract?

Ans. I don't know that I can answer that question. I couldn't do it from my own knowledge, it would be only a supposition.

Q. Do you know enough about it to say if the speed of the train is a desirable element on the part of the government in giving a railroad a mail contract?

Ans. I can only answer that is this way, that the Southern Railway now have a contract to carry the mail from Washington to New Orleans and the last information I had it carried nothing but mail cars. It has the right of tract over everything,—over all trains in both directions. That is my information.

Q. If there is anything which you think is pertinent please state it?

Ans. We take No. 35 train for instance. Her speed over the Atlantic Coast Line is worked out as 35:74. That is, the average speed of the train is 35:74 hundred or practically thirty-six (36) miles an hour; while the speed of No. 32 is worked out as 38:18. That train is faster as I have explained by the arbitrary time at Jacksonville and Washington. It has been our endeavor to slow it down because we have found that it is very difficult to maintain this schedule; especially so from November until May, when the trains in both directions are very much heavier than at any other time, because they haul more cars.

Q. How many sleeping cars are dropped off No. 35 coming South and at what points before reaching Tampa?

Ans. One is dropped off at South Rocky Mount for Wilmington, one at Florence for Augusta; one at Charleston for Charleston proper; one at Jacksonville, as well as a dining car; and one sleeper continues through to Tampa.

173 Q. Isn't it therefore a fact that *that* after No. 35 gets into Florida it becomes a lighter train and could consistent with speed make more stops than at an earlier part of its journey?

Ans. Yes sir.

Cross examination by Assistant Attorney General, W. H. TOWNSEND:

Q. What is the difference in schedule South of Jacksonville, and North of Jacksonville?

Ans. I have not got that work up but I should say the schedule south of Jacksonville would be about 27 or 28 miles an hour.

Q. North of Jacksonville it is what?

Ans. 38:18 for No. 32.

Q. It is much slower in Florida?

Ans. Yes, sir, the trains are lighter and it does more local work. Jacksonville is the objective point.

Re-direct examination:

Q. Does No. 39 and No. 40 between stations, of course allowing for starting and stopping, run as fast as No. 32 and No. 35 between stations?

Ans. We have been up before the Railroad Commission at Raleigh, N. C. The Railroad Commission got on the train at Raleigh and road on that train. They wanted us to put on an extra train, I believe they run as fast as they can turn a wheel.

Q. Why is No. 39 and No. 40 slower trains than No. 32 and No. 35?

Ans. Because they have to do the local work and make the stops.

A. W. ANDERSON, a witness for Defendant, testifies:

Direct examination:

Q. What is your position with the Atlantic Coast Line?

Ans. General Superintendent, First Division.

Q. How much of the length of the run of No. 32 and No. 35 does your division cover?

Ans. Between 500 and 600 miles.

174 Q. Mr. Anderson, I asked other witnesses as to the importance of maintaining the speed of these trains and I will not ask you in regard to that. I believe I asked Mr. Borden about the importance of this feature of these trains as to the Mail contract and he referred me to some other department and now I ask you about the Mail contract?

Ans. We handle, of course, United States mail and we handle the Cuban Mail. The United States Government, as you all know, is very jealous of its mail service and they keep after us about our failures to provide good service and which means our schedule. If we do not provide it, they call it to our attention.

Q. To change it to other routes would cause financial loss to your Company?

Ans. Very serious; you can imagine what it would mean by the loss of the heavy mails handled by No. 32 and No. 35 for over a thousand miles at so much per pound, and mile.

Q. How long have you been Superintendent of the First Division of the Atlantic Coast Line?

Ans. About five months.

Q. During that time have you had occasion to go over the Latta Branch Railroad?

Ans. Yes sir.

Q. There was something in the testimony as to the character of the passenger car running between Latta and Clio, I will ask you from your experience as a Railroad man, if this car affords a reasonable passenger accom-odation as compared with similar branch lines?

Objected to as a matter of opinion.

Ans. I do think that the character of the equipment on there is amply good for the character and extent of the business on a branch line twenty miles in length. I heard the objection raised to the coach and its equipment and made a personal examination; and found the car in very good condition; not such as we would handle on our main line, for the reason that one man rides possibly all day on a car and the comfort of the car for that man is a very different
175 proposition from the comfort needed on a line of twenty miles length which meas*n* it may be an hour's run. I was agreeably surprised at the condition and general character of the car; and if we are not to use our passenger cars that are old in service of that kind, then we have got no other way to make use of them and we have to destroy property that we consider from Twenty-five Hundred to Thirty-five Hundred Dollars each. The water cooler was in keeping with what I would have provided just such service and the complaint as to what was drunk out of is a difference between a glass and a cup and the reason a cup is used is because we have found on these little branch runs passengers have an interest in the conductor and the train crew and they break the glasses and take them off while tin cups they don't seem to prize so highly and they last better; and we do not suffer from complaint that we don't have anything for a man to drink out of. That is a princi*ple* reason for our using cups and not glasses.

Q. What would you say as to Latta Branch paying as passenger run,—how many miles is it?

Ans. Twenty miles.

Q. The accom-odation furnished the people, what would you say as to its being a paying enterprise as to its passenger traffic, taking into consideration the cost of operating the passenger traffic?

Ans. As to general branch lines themselves their proportion of the business actually accruing to the mil-age on those branch lines are nearly unprofitable, and I have little doubt but that the Latta Branch run independently with the service given that we give it, would be at an actual loss.

Cross examination by Asst. Attorney General TOWNSEND:

Q. The value of Branch lines is not to be measured solely by the proportion of the earnings on that line alone but includes its value as a feeder to the general road?

Ans. Necessarily, that is the value they have but we can-
176 not figure that.

Redirect examination:

Q. In your judgment, would it be practicable for the Coast Line to stop its through train No. 32 and No. 35 at similar points and if not, why not?

Ans. I would regard such a necessity a serious calamity to our road for the reason that it would divert our through passenger business for Florida largely on which we get a thousand miles haul to other lines. And again it would cause us the loss of mail business for Cuban and Florida points and for the further reason that if we were required to make these stops it is natural to be supposed that the same action would be taken with reference to the Sea Board and the Southern Railroad, who are our strong competitors for this business and the result would be the business would not come South at all but would go West or some where else. People in this day, and especially tourist travel are not going to ride on slow trains,—when I say slow trains I mean trains that stop everywhere. Now trains No. 32 and No. 35 are no faster when they are running than trains No. 39 and No. 40. They both run just as fast as they can turn a wheel and the only difference between the speed of the one and the speed of the other is one stops frequently and the other stops just as seldom as we can arrange for it to stop. I would add that within the last twelve months, to my knowledge, because, while not connected with the Coast Line here, I have been indirectly connected with the interests and in my knowledge they have had to break the connection at Augusta, Ga., on account of their inability to meet the requirements on its line of road,—a connection to the vast territory west and south-west of Augusta.

Q. In the thinly populated country as we find in the South as compared with the thickly populated country, to-wit the North. Isn't it very desirable for the southern road to encourage
177 tourist travel *travel* as a source of passenger revenue, and is it not more important than for the Northern roads to do the same thing because of their immense passenger traffic?

Ans. I think so sir. And I would also say further, that I regard the fast trains, the elegant parlor cars, sleepers, dining cars that are being out on these southern trains as having done as much not only to develop the south as the tourest section of the country but to develop the material growth of the south as any other factor I know of. So, without fear of contradiction to make these trains slow trains, as would necessarily result from the action proposed here, would be a serious blow in the direction of retarding the growth and development of this section of the country; for the very good reason, that the impression that travellers get from the service on the train is greater than they get from any other thing probably they see and come in contact with on that route to and from these resorts.

Q. Would the expense involve- in the equipment of these through trains be justified to satisfy local condition alone? That is to say, would it pay the company to keep these trains if they were local trains?

Ans. It would not. And you don't want any better evidence of the accuracy of my statement than to examine into the character of

the passenger on these sleepers, dining cars and chair cars, etc. They are nearly all through passengers; local travel doesn't use sleepers and chair cars and dining cars as a rule, there are exceptions, of course.

Q. What have you to stay as to stops of No. 32 and No. 35 in Florida?

Ans. Jacksonville, Fla., is the great distributing point of the passenger travel in that section of the country. Fast trains composed of magnificent cars of all kinds run from the North and West through to Jacksonville, Fla. At that point one of our strongest competitors stop- and we handle his business south of that and
178 therefore one of the greatest — for running fast up to Jacksonville is done away with. There is another very important feature and that is that the business is Florida business through to Florida and from Jacksonville South they are scattered in every little town and hamlet in the country and the necessity for more frequent stops is, of course, greater. There is another feature, at Jacksonville we handle mail to and from the East Coast Railroad which takes in the Nassau mail. On our own line, we handle the Cuban mail from Port Tampa. Now between Port Tampa and Jacksonville we have got all the time we need on at least one of the two trains and for the reason that we leave on the arrival of the mail from Cuba and even if we run very rapidly and without stops, we could get to Jacksonville before the East Coast arrived there and before the mail coming on the East Coast and therefore we have no reason why we should avoid these stops when we have plenty of time. I would like to say just here, in making up our schedule, in making our stops in deciding all the conditions that are liable to arrive in connection with any of our passenger trains we try to reason out the whole subject and we try to decide on what is the greatest good to the greatest number of people that will be or can be served by such or such service. In arriving at this conclusion, we do things that one point may actually suffer from but in doing it, it is not with any desire certainly to cause it to suffer but with the greatest desire as stated before to serve the greatest number. While one point might suffer, we think the good done other points will be so much greater that it is the proper thing to do. I would like also to say that my opinion is that if No 32 and No. 35 are made local trains as are No. 29 and 40 and the town of Latta, as well as every town of its size on the line of railroad, would soon feel the effect of such ser-
179 vice, would soon begin to complain that we have only local trains instead of through fast trains, some of them through fast trains.

Q. Was the Short Cut built for the accom-odation of through or local trains?

Ans. The Short Cut was clearly built to shorten the time between the North and South and principally shorten it for passenger trains; for at that time there was not very much truck business moving North and South. That is the development of the last fifteen years. At that time that road was built in order to meet the competition that was growing up around the property and trying to shorten its passenger line between the North and South.

180 STATE OF SOUTH CAROLINA:

In the Supreme Court.

C. W. GARRIS, J. H. WHARTON, and B. L. CAUGHMAN, as Railroad Commissioners, Plaintiffs,
vs.
THE ATLANTIC COAST LINE RAILROAD COMPANY, Defendant.

The term of office of C. W. Garris, one of the plaintiffs, having expired, and J. H. Earle having been elected a Railroad Commissioner, it is on motion of the Attorney General ordered that this case be continued and prosecuted in the name of J. H. Wharton, B. L. Caughman and J. H. Earle as R. R. Commissioners, Plaintiffs.

Y. J. POPE, *C. J.*

15 Jany., 1906.

181 THE STATE OF SOUTH CAROLINA:

In the Supreme Court.

J. H. WHARTON ET AL., Plaintiffs,
against
ATLANTIC COAST LINE RAILROAD COMPANY, Defendant.

Statement of Facts.

This is an application to the Supreme Court, in the exercise of its original jurisdiction, for a writ of mandamus, requiring the respondent to stop two of its fast mail trains when flagged, in order to provide adequate facilities to the citizens of Latta and surrounding country, in making certain railroad connections.

The petition alleges:

"That on June 7th, 1804, certain citizens residing at Latta and along the line of the Latta Branch Railroad, filed a petition with the plaintiffs as Railroad Commissioners alleging that the Atlantic Coast Line Railroad Company was furnishing insufficient accommodations for passengers traveling on said railroad, and asking that the said Railroad Company be compelled to stop its passenger trains, Numbers 32 and 35, at its station in the town of Latta when flagged, for the purpose of receiving and delivering passengers at said station.

That thereafter, on July 29th, 1904, the said Railroad Commissioners after investigating the facts stated in said petition, and after notice and hearing the above named defendant in reference to the facts of said petition, found as a matter of fact, that sufficient accommodation was not furnished the citizens along the said Latta Branch Railroad, and in the town of Latta by the Atlantic
182 Coast Line Company at its station in Latta, and said Railroad Commissioners thereupon made an order that the said passenger trains, Numbers 32 and 35, operated by the Atlantic Coast Line Railroad Company, should stop when flagged, at the said Latta station, on and after August 1st, 1904."

The respondent contends that sufficient passenger accommodations are now furnished the citizens of Latta, and those residing along the Latta Branch Railroad and relies upon the defense "that said order of the Railroad Commission of South Carolina is unreasonable, unnecessary, a direct burden upon interstate commerce, and therefore a violation of and in conflict with Section 8, of Article 1 of the Constitution of the United States, which provides that Congress shall have the power to regulate commerce with foreign nations and among the several States, and further, that said order is a direct and unnecessary interference with the speedy carriage of mails of the United States."

The testimony was taken by a special reference under order of the Court.

The decision of the Commissioners is set forth in the following notice served upon the general superintendent of the railroad company:

"DEAR SIR: We beg to hand you herewith the finding and order of this Board in the matter as set forth, as follows:

On petition of the town Authorities of the town- of Latta and Clio and citizens along the Latta Branch Railroad for the stopping of Trains Nos. 32 and 35 on flag, for receiving and delivering passengers at said station. After personal inspection of the situation at Latta, and the demand of said citizens for those accommodations, it

it appears to this Board that sufficient accommodation was
183 not furnished to those citizens to fulfill the requirements of the Statutes of this State. The evidence was sufficient to warrant this Board in demanding that better accommodation should be furnished, and that it was not unreasonable to ask the said Company to stop Trains Nos. 32 and 35 on flag.

Therefore, it is hereby ordered that said trains shall stop on flag, at said Latta station on and after August 1st."

The attorney who filed an argument in behalf of the petitioners, thus states the reasons why the accommodations are considered insufficient:

"Any inconvenience arising to passengers at Latta necessarily arises to passengers from Clio and the territory adjacent to the railroad between the two places, a distance of twenty miles, passengers from Clio and the stations between the two places having to pass through the junction point, Latta. Hence, there are involved not only passengers from Latta, but from a large territory, which as it appears from uncontradicted testimony, is a progressive, prosperous and thickly settled section.

A passenger at Latta may take a train at 8 A. M. and go to Dillon on the Latta Branch Train. This train returns immediately and passing Latta, goes to Pee Dee Junction, where connection may be had for Charleston and points on the Cheraw and Darlington road and Wilmington and immediate points. The Latta Branch train returns from Pee Dee forthwith, and, after a wait of two or three hours at Latta, goes to Clio. The morning express a local train, arrives at 10.45 A. M. for points north. During the day at some indefinite time local freight trains pass, one going north and the

other south, making connection with all points south of Latta, including Columbia. This is the only Columbia connection. The Latta Branch train returns from Clio and goes down to Pee
184 Dee just behind the local passenger. It returns from Pee Dee and goes up to Clio, where it rests for the night. Thus there arrive and depart from Latta two passenger trains, the Latta Branch train five times and two freights, aggregating nine trains per week day. On Sunday there are only two trains.

With all these trains, there is only one connection per day north to Dillon and points beyond. The stopping of train 32 would remedy this. There is only one connection to Columbia, and passengers for points beyond Columbia have to remain over night and pay a hotel bill, either in Florence, Sumter or Columbia. There is no connection for Orangeburg and points betwee- Sumter and Augusta, absolutely none, without having to pay a hotel bill and being put to inconvenience and delay. The stopping of train 35 would correct all this."

The following testimony of the general superintendent of the respondent gives a clear outline of the grounds upon which it contends that the facilities are adequate:

"Q. In describing these connections that are afforded to Clio, S. C., are not all the connections you have described also afforded Latta, S. C.? A. Yes, sir.

"Q. Do you know the last census population of Latta S. C.? A. Yes, sir; I have it taken from the United States Census, a copy of which I have. The population, according to the census of 1900, was 453.

"Q. What was the population of Clio? A. Five hundred and eight.

"Q. What is the population of intermediate points between Clio and Latta? A. The only point shown is Dunbar, 115 people; the United States Census report showing that the other points are less than fifty population and are, therefore, not given.

Q. What is the census population of Kingstree, S. C.?
185 A. Seven hundred and sixty people.

Q. How many passenger trains a day in all directions, afford to the people of Latta, S. C., an opportunity of going off by boarding a train? A. Eleven. The following trains arrive at Latta from Clio: At 7.00 a. m.; 6.05 a. m. from all points south, 10.30 a. m.; from Dillon 7.50 a. m. from Pee Dee and points beyond, 9.35 a. m. and 9.05 p. m. The following trains depart from Latta: For Clio, 11.15 a. m. and 9.18 p. m.; 7.01 p. m. for Wilmington and points south and west ; 8:30 a. m., Pee Dee and points beyond, and 7.40 p. m. for Pee Dee and points beyond. In addition to which there are two local freight trains provided with passenger service leaving Latta at 9.00 a. m. for Fayetteville and intermediate points, and at 7.01 p. m. for Florence and intermediate points. * * *

Q. Is it not a fact, Mr. Craig, that the only one connection that is not made either in the morning or afternoon by the trains that you have described, is the train which leaves Florence at 8.00 a. m. for

Columbia, S. C.? A. That train only runs to Sumter but it affords connection at Sumter.

Q. Is or not that the only train that the two trains that you have described do not make connection with? A. Yes, sir."

It also relies upon the fact that trains No. 32 and 35 already stop at Dillon which is only six miles from Latta.

Opinion by EUGENE B. GARY, *A. J.*:

On the former hearing before this Court, the respondent interposed a demurrer to the petition which was overuled.

One of the grounds of demurrer was: "In that the order of the Railroad Commission is not the result of a judicially determined fact, and the defendant not having had its day in Court on
186 the merits of said order, the enforcement of the order of the Railroad Commission, deprives the defendant of its property without due process &c."

The Court in disposing of this ground of demurrer said: "The facts were determined by a tribunal well recognized and adopted throughout the land. The defendant was notified, appeared and contested the facts upon the merits."

As the facts were judicially determined by a tribunal, empowered by statute to make such adjudication, they are not subject to review by this Court, in the absence of allegations charging fraud or other grounds, for setting aside the adjudication.

Therefore, the question to be determined is, whether the order of the Commissioners, requiring the railroad company to stop at Latta, (if flagged,) its two fast mail trains engaged in carrying interstate passengers, was a burden upon interstate commerce, when the accommodations are otherwise inadequate.

The mere fact that they are fast mail trains engaged in carrying interstate passengers, does not exempt them from regulation under the statute of the State.

In the case of Lake Shore Co. *v.* Ohio 173 U. S. 285 the Court had under consideration a statute of Ohio providing that "each company shall cause three, each way, of its regular trains carrying passengers, if so many are run daily, Sundays excepted, to stop at a station, city, or village, containing over three thousand inhabitants for a time sufficient to receive and let off passengers."

At the time when it was contended that the statute was violated, the railroad company caused only one of its trains to stop as required by the statute, although it was then operating three or more
187 trains, both ways, over its road; all of which, except the one that stopped at the station, were fast mail trains transporting interstate passengers.

On the assumption that the statute was not unreasonble, the Court held that the statute was constitutional, and used the following language:

"The power of the state, by appropriate legislation, to provide for the public convenience, stands upon the same ground precisely as its power by appropriate legislation to protect the public health, the public morals, or the public safety. Whether legislation of either

kind is inconsistent with any power granted to the general government is to be determined by the same rules. * * * The statute does not stand in the way of the railroad company running as many trains as it may choose between Chicago and Buffalo, without stopping at intermediate points, or only at very large cities on the route, if, in the contingency named in the statute, the required number of trains stop at each place containing 3000 inhabitants long enough to receive and let off passengers. It seems from the evidence that the average time required to stop a train and receive and let off passengers is only three minutes. Certainly the state of Ohio did not endow the plaintiff in error with the rights of a corporation for the purpose simply of subserving the convenience of passengers traveling through the State between points outside of its territory. It was for the state to take into consideration all the circumstances affecting passengers travel within its limits, and, as far as practicable, make such regulations as were just to all who might pass over the road in question. It was entitled of course, to provide for the convenience of persons desiring to travel from one point to another in the state on domestic trains. But it was not bound to ignore the
convenience of those who desired to travel from places in the
188 state to places beyond its limits, or the convenience of those
outside of the state who wished to come into it. Its statute is in aid of interstate commerce of that character. It was not compelled to look only to the convenience of those who desired to pass through the state without stopping. Any other view of the relations between the state and the corporation created by it would mean that the directors of the corporation, could manage its affairs solely with reference to the interests of the stockholders, and without taking into consideration the interests of the general public. It would mean, not only that such directors were the exclusive judges of the manner in which the corporation should discharge the duties imposed upon it in the interest of the public, but that the corporation could so regulate the running of its interstate trains as to build up cities and towns at the ends of its line or at favored points, and by that means destroy or retard the growth and prosperity of those at intervening points. It would mean also that, beyond the power of the state to prevent it, the defendant railway company could run all its trains through the state without stopping at any city within its limits, however numerous its population, and could prevent the people along its road within the state who desired to go beyond its limits from using its interstate trains at all, or only at such points as the company chose to designate. A principle that in its application admits of such results cannot be sanctioned."

The statute of Illinois is as follows: "Every railroad corporation shall cause its passenger trains to stop upon its (their) arrival at each station advertised by such corporation as a place of receiving and discharging passengers upon and from such trains, a sufficient length of time to receive and let off such passengers with safety; Provided, all regular passenger trains shall stop a sufficient length
of time at the railroad stations of county seats, to receive and
189 let off passengers with safety."

This statute was held to be unconstitutional in the case of

Cleveland &c. *v.* Illinois &c., 177 U. S. 514. The Court used the following language: "The question broadly presented in this case is this: Whether a state statute is valid which requires every passenger train, regardless of the number of such trains passing each way daily, and of the character of the traffic carried by them, to stop at every county seat through which such trains may pass by day or night, and regardless also of the fact whether another train designated especially for local traffic may stop at the same station within a few minutes before or after the arrival of the train in question. * * *

While, as we held in the Lake Shore Case, railways are bound to provide primarily and adequately for the accommodation of those to whom they are directly tributary, and who not only have granted to them their franchise but who may have contributed largely to the construction of the road, they are bound to do more than this, and may then provide special facilities for the accommodation of through traffic. * * *

With no disposition whatever to vary or qualify the cases above cited, neither the conclusions of the Court nor the tenor of the opinions as opposed to the principles we hold to in this case, that, after all local conditions have been adequately met, railways have the legal right to adopt special provisions for through traffic and legislative interference therewith is unreasonble and the infringement upon that provision of the Constitution which we have held requires that commerce between the states shall be free and unobstructed."

In commenting on the case of Cleveland &c. *v.* Illinois &c.
190 173 U. S. 285 the Court says: "This case is readily distinguishable from the one under consideration, in the fact that the statute of Ohio required only that three regular passenger trains should stop at every station containing 3,000 inhabitants, leaving the company at liberty to run as many through passenger trains exceeding three per day, as it chose, without restriction as to stoppage at particular stations. In other words, it left open the loophole which the statute of Illinois has effectually closed."

The Court recognized the principle that it is the duty of the railroad company, to provide, *primarily,* sufficient accommodations for those to whom it is directly tributary.

From this doctrine, it follows as a necessary corollary that it is only "after all local conditions have been adequately met, railways have the legal right to adopt special provisions for through traffic."

The facts judicially determined by the commissioners show that the accommodations are adequate, and that the citizens of Latta are entitled to relief.

In seeking to give relief the Commissioners have ordered trains No-. 32 and 35 to stop when flagged.

This Court has reached the conclusion that the writ of mandamus should be issued; but in order that the respondent may have the opportunity of discharging its primary duty in the premises, without stopping trains No-. 32 and 35 on flag, the writ will be so framed as to confer upon the railroad company the alternative right to provide facilities substantially the same as those which would be

afforded the citizens of Latta by stopping trains No-. 32 and 35 on flag.

It is the judgment of this Court that the writ of mandamus be issued in accordance with the conclusions herein announced.

191 [Endorsed:] The State of South Carolina, in the Supreme Court. W. H. Wharton *et al.*, Plaintiff-, *v.* A. C. L. Ry. Co., Defendant. Opinion by Eugene B. Gary, A. J. We concur, Y. J. Pope, C. J., Ira B. Jones, A. J., C. A. Woods, A. J. (Report.) Supreme Court of South Carolina, Clerk's Office, Columbia, S. C. Filed 26 Feb. 1906. U. R. Brooks, Clerk.

192 THE STATE OF SOUTH CAROLINA:

In the Supreme Court.

C. W. GARRIS, J. H. WHARTON, and B. L. CAUGHMAN, Railroad Commissioners, Petitioners-Plaintiffs,
against
ATLANTIC COAST LINE RAILROAD COMPANY, Defendant-Respondent.

Petition for Rehearing.

To the Honorable Justices of the Supreme Court of the State of South Carolina:

Your petitioner, Atlantic Coast Line Railroad Company, through its counsel, Willcox & Willcox, in petitioning for a re-hearing in the above stated case, respectfully suggests that the Court has in its decision overlooked material matters of law and fact, on the following grounds:

1. The conclusion of the Court is that

"This court has reached the conclusion that the writ of mandamus should be issued; but in order that the respondent may have the opportunity of discharging its primary duty in the premises without stopping trains No-. 32 and 35 on flag, the writ will be so framed as to confer upon the railroad company the alternative right to provide facilities substantially the same as those which would be afforded the citizens of Latta by stopping trains No-. 32 and 35 on flag."

In this conclusion the Court has decided two points: (*a*) That, beyond the power of that which is merely police regulation, state authority has the right to control, by its legislation and
193 judicial orders, interstate commerce trains; and (*b*) that the foundation for this right is, because, as a primary duty owed by the railroad company adequately to provide local accommodations, it has been ascertained that this primary duty has not been performed.

It, therefore, holds that but for the fact that the railroad company has not adequately supplied these local accommodations, state authority could not lay its hands upon that portion of the railroad service which is supposed to be controlled entirely by the constitution and laws of the United States, or that branch of it known as regulating interstate commerce.

The respondent, in this petition for a re-hearing, will endeavor to make plain two positions which it thinks are vital to the controversy.

The first position is, that if it is the primary duty of the railroad company to provide for local accommodations, and if it is the secondary duty of the railroad company to provide for interstate commerce conditions, it cannot be contended but that these two duties, denominated primary and secondary, are of eqaul importance in the one case to the local traveling public, and in the other case to the interstate traveling public; and that it is equally the duty of the railroad company to provide for both, even though one be termed primary and the other secondary. And we will attempt further to show that the primary duty of providing for the local traveling public is wholly within the domain of state authority, and that the secondary duty of providing for interstate commerce travel is wholly within interstate commerce authority; and in enforcing either the
194 primary or secondary duty, neither the state authority nor interstate commerce authority can invade the jurisdiction of the other. For the evident reason that in enforcing these respective and in dependent duties of the railroad company to the public, local and interstate commerce, it is not necessary for any practical purpose, that the two authorities, state and interstate commerce, should sacrifice the accommodations with which these respective duties are fulfilled, because they exist, or can and should exist, independently; and jurisdiction, if it does not otherwise exist, cannot be given, either to state or to interstate commerce authority, so as to control and impede the other simply because that which it has the authority to enforce is not adequately supplied.

As a matter of illustration, we do not question the power of the railroad commission, through its orders, the state court controlling these orders upon their merits, to enforce adequate local accommodations at Latta; but inasmuch as these adequate accommodations can be required without invading the domain of interstate commerce, it is the duty of the state authority to require these adequate accommodations without destroying accommodations which are afforded interstate commerce travel, the regulation of which is exclusively within the domain of the congressional authority; and the converse of the proposition is true, that if, under the interstate commerce law, congressional authority should require the interstate commerce road to furnish proper equipment for interstate commerce travel, it should do this without trespassing upon the domain of state authority so as to sacrifice to any extent the equipment designed for local accommodations. The practical method by which the two duties, primary
195 and secondary,—that is, the class of trains with which these two duties are met are necessarily entirely different, as the jurisdiction of the court is different; and when either authority attempts to control by its orders the trains which are used to promote these respective duties, necessarily it results in a trespass upon the jurisdiction of the one authority by the other.

We will attempt to show on the second point that if a local statute or the order of a railroad commission can control the operation of interstate commerce trains, but can only do so after local accommodations have not been sufficiently met—in other words, if it be the

law that the primary duty and the secondary duty cannot exist side by side, but that the secondary duty, while it cannot be regulated by local legislation, can yet be entirely destroyed by local legislation, provided in the judgment of the local legislation the primary duty is not adequately performed; then we suggest that the fact of inadequate performance of the local duty must be determined by due form of law; and we will attempt to show that such a fact in this case has never been ascertained, much less ascertained by due form of law.

2. Contending always that if this Court should find that adequate local accommodations are not supplied, the limit of its power is to require local accommodations to be supplied, and to require it (which it can do) without interference with interstate commerce trains, we will first take up the question that if the law were otherwise it has never been judicially ascertained that local accommodations are not adequately supplied.

196 The railroad company, respondent, was served with a petition, or complaint, which alleged that the citizens residing at Latta and along the line of the Latta Branch Railroad had filed a petition with the plaintiffs as railroad commissioners, alleging that the Atlantic Coast Line Railroad Company was furnishing insufficient accommodations for passengers traveling on said railroad and asking that the railroad company be compelled to stop its passenger trains Nos. 32 and 35 at Latta. This was an allegation of the petition necessary to be proven as a foundation for the proceeding in mandamus. It was necessary, in other words, to prove that they had filed a petition to stop trains Nos. 32 and 35 at Latta. It was also necessary to prove that they had originally filed a petition alleging that the Atlantic Coast Line Railroad Company was furnishing insufficient accommodations at Latta. For the evident reason that this Court has ruled that it is necessary to show a violation of this primary duty before the secondary duty can be sacrificed.

We will contend later that the proceeding for the ascertainment of this fact, as to its method, was in violation of Article 1, Section 5, of the state constitution, and Article 14, Section 1, of the United States constitution; but for present purposes we will attempt to show to the Court that it is not a fact, as alleged in the complaint,—which must have been proven, even under the view taken by this Court as a foundation for the proceeding in mandamus,—that there was ever a petition antedating the complaint filed by either the people of Latta or the surrounding towns, setting forth that insufficient accommodations were supplied. We will further show that as alleged in the complaint the railroad commission, as a result of any hearing,

197 never found as a matter of fact that insufficient accommodations were furnished the citizens of Latta and along the Latta Branch Railroad. In spite of the fact that the railroad commission in its letter to the railroad company (denominated by the Court the order of the commission) said that better accommodations should be furnished, it does not appear by any testimony that the railroad commission passed upon such a question alleged in the complaint as material allegations, or that the railroad commission had a right to pass upon such questions, because such a charge as the failure to

provide for this primary duty was not alleged in the original petition. The railroad company was not called upon to defend this allegation of insufficient accommodation, and the railroad commission did not consider it, and had no right to consider it, because a question not before the commission for consideration. On this point, we do not see in the order of the railroad commission any statement that the question of better local accommodations was considered, or that the railroad commission attempted to say that its excuse for stopping interstate commerce trains was due to the fact that it had determined that local accommodations were not supplied; but the railroad commission, in its order, only stated in terms that the stopping of trains 32 and 35 would not be unreasonable, because it would result in better accommodations. It was merely an *obiter dicta* in effect stating that stopping trains 32 and 35 would give additional accommodations, but did not decide that those already given were not entirely adequate.

If, however, we misinterpret the language of this order, and the Court has construed it properly, we then submit that the language of the order is merely an allegation of the complaint, to be
198 proven as any other fact, and should not be self-proving, especially when petitioners have made it a part of their complaint, to be proven as a vital fact; because the railroad company would be wholly denied its defense if the mandate of a railroad commission should be accepted as proving conclusively, without question, that which it states to have found as a matter of fact. Especially is this the case when the merest inspection of the testimony will show to the Court that the railroad commission never considered and never had a right to consider the question of insufficient local accommodation as a violation on the part of the railroad company of its primary duty, which this Court has held to be the only excuse for an interference by state authority with the secondary duty.

Again, by its demurrer the railroad company, respondent, contended that while the railroad commission could regulate local accommodations generally, it could not do so when the question is made that its orders are unreasonable and amount to confiscation or impose upon the common carrier an unreasonable burden by compelling it to conform to these orders without a trial of the question of fact, to be determined by a court of competent jurisdiction. It made the question that if it conceived the order of the railroad commission to be unreasonable—which, at best, is nothing but mere legislation,—it could test this question by enjoining the enforcement of the order, and the court before which the injunction proceeding would be tried would cause testimony to be taken and ascertain the rights of the railroad company in passing upon the question of fact if the order was reasonable or unreasonable. Respondent knew that such a question could be raised and decided in an injunction
199 proceeding. It did not believe that such a question could be raised in a mandamus proceeding. It raised the question by the demurrer that a mandamus proceeding was never used except to enforce a plain ministerial duty, or to enforce the result of a judicially determined fact. The respondent understood the decision

of this Court on the demurrer to mean that its position was correct, to the extent that it had the right to have the question of fact—the reasonableness or unreasonableness of the order of the railroad commission—determined by some court, but that under the peculiar wording of the statute this court held that the mandamus proceeding would afford respondent just such a consideration of its rights on the question of fact as would be afforded it had the respondent taken the initiative and brought the injunction proceeding, or a writ of prohibition, as an original proposition.

In pursuance of this, this Court held that the railroad commission had a right to pass its orders—that is, to legislate, but that it should be left to a court, by mandamus proceeding, to enforce this order. We cannot conceive that the Court intended to say that by the mandamus proceeding this Court would, without consideration, accept the order of the railroad commission as reasonable, when it might not be reasonable, and automatically enforce it regardless of the right of the railroad company to have the question of right determined. We were led to believe this naturally, for the reason that this Court, in pursuance of its holding, appointed a referee to take the testimony and report it to the Court, for the only purpose that could have been thought of—that this court might, upon the report of that testimony, give the railroad company its day in court and try and determine the question of fact necessarily involved,
200 for a proper determination of the legal rights of both parties.

To what end could this testimony have been taken but for the purpose of trying the question of fact? Otherwise, why the order of Court appointing the referee and the expense and trouble of taking the testimony, all to no purpose, resulting in a work of supererogation, unless it was for the only conceivable purpose of a consideration of the testimony in determining the question of fact? Although this order of reference was made upon motion of the Attorney-General of the state, representing the petitioners, for the purpose outlined, evidently in consequence of his interpretation of the meaning of the decision of this Court upon the demurrer, that in this way the question of fact should be tried; and although the Attorney-General and other counsel for the petitioners did not take the position that the fiat of the railroad commission tied the hands of the Court; this Court has, we contend, overlooked these facts and held, without any such point being made, that it could not consider the facts of the case.

We contend that the whole theory of the litigation consistent with the former orders of this Court, which is the only view that would be consistent with the order appointing the referee to take the testimony—and by consent of counsel, because on motion of the Attorney-General that the referee should be appointed, so that the question of fact should be determined by this Court,—was the theory upon which the Attorney-General of the state brought the action and his method of giving the railroad company its day in court; and, in addition, the question of fact was elaborately argued by counsel for petitioners as a question submitted to the Court, without any
201 point being made that the question of fact could not be considered.

Again, this Court has held that the secondary duty cannot be controlled by state authority, provided the primary duty is adequately performed. Therefore, it follows, that when the respondent railroad company affirmatively defended on the ground that adequate local facilities were supplied, it would be necessary to determine the question of right for the Court to consider the question of fact upon which this affirmative defense is based.

Although the Court decides that it cannot consider the question of fact—that it cannot determine by considering the testimony whether or not adequate local facilities are supplied,—it says in its conclusion that interstate commerce trains cannot be interfered with unless these adequate local facilities are supplied, and violates, we submit, the result of this holding by stopping trains 32 and 35 at Latta when it has not determined whether or not these local facilities are adequately supplied. It is true that the Court holds that its writ will not require trains 32 and 35 to stop at Latta, provided respondent railroad company will supply adequate local facilities substantially the same as stopping trains 32 and 35 at Latta; but, we ask, Who is to determine what arrangement would afford the local traveling public substantially the same facilities? If this alternative writ had been the result of a judicial determination of the question as to what would or would not be substantially the same facilities, which was one of the affirmative defenses of the railroad company, this respondent railroad company might be in a position to know what would be a substantial compliance in its pro-
202 vision for local facilities; but until it has its day in court on this proposition, it must return to the railroad commission to find out from it, without a trial, that which it must provide as a result only of the wishes of the commission. We contend that this is the result and is the position that we are led into, for the reason that the Court has not considered the question of fact as to whether or not adequate facilities were not already sufficiently supplied,—assuming, for the purposes of argument, that the Court has a right to require interstate commenrce trains to stop upon the order of a railroad commission because local accommodations are not sufficiently supplied.

Before leaving this branch of the case, we beg to call the attention of the Court to the fact that while it has not considered the question of fact, and has refused to consider it as a matter of law, yet in its statement of facts constituting a part of the decision, before it could reach the conclusion that it has reached, it has undertaken to state the testimony as if it had some bearing on its conclusion.

We submit that we would like for the Court to consider the entire testimony, and not the extract of the testimony of the general passenger agent (denominated by the Court general superintendent) as giving a clear outline of the grounds upon which respondent contends that the facilities are adequate. We do not think that the extract quoted even approaches a full description of the character of the contention of respondent on this point; and we submit, further, that in its quotation of acts, as taken from the argument of

petitioners' counsel, the Court, upon inspection, will find that
203 the testimony so quoted is unintentionally inaccurate.

We make the point here that this Court could not come to a legal conclusion without considering, in some measure, the testimony; and the error, if any, which deprives the respondent of its right is the consideration by this Court of this testimony only partially, after it has, we submit, in error, concluded not to consider it at all.

As we have stated, we supposed that the failure of this Court to sustain the demurrer on the ground that to enforce the order of the railroad commission without giving the railroad company a trial on the question of fact deprived it of property without due process of law, was because the Court intended to give this trial in the mandamus proceedings by a consideration of the testimony which its special master was appointed to take. We supposed, therefore, that the Court appointed the referee to take the testimony in that upon the question of unreasonableness of the order the railroad company otherwise would have been deprived of its property without due process of law, in violation of Article 1, Section 5, of the constitution of the state, and Section 1, Article 14, of the constitution of the United States.

On this point this Court has declared itself in the case of State *v.* Earle, 66 S. C. 194. This was a case where the city of Columbia enacted an ordinance within its authority to legislate in matters of police regulation. Under a writ of prohibition initiated by the railroad company, and a demand by the railroad company that a referee be appointed to take testimony on the question of
204 right involved, as to the reasonableness or unreasonableness of the ordinance, which the railroad company declared deprived it of its property without due process of law,—this Court, after an elaborate review of the authorities, stated that these authorities demonstrated that the petitioner had the right to show by testimony that the ordinance was so unreasonable in its operation as really to be spoi*l*ation or confiscation of the railroad's property under the guise of legal forms, and that the ruling of the circuit judge, denying this right, was erroneous.

This view of the law has been again declared in the case of Thomasson *v.* Southern Ry., 72 S. C. manuscript decision, page 1.

We submit that there can be no greater weight given to the order of a railroad commission—which is, at best, mere legislation—than can be given to an ordinance of a city council purporting to effect police regulations. If the latter can be attacked as unconstitutional, because so unreasonable as to deprive a citizen of *its* rights without due process of law, logically the order of a railroad commission can likewise be attacked.

3. Returning to the first proposition, we submit that if our position taken on the second ground is entirely at fault—that is to say, if it be a fact that the original petition by the people of Latta alleged insufficient accommodations; and if this question was passed upon by the railroad commission; and if the decision of the rail-
205 road commission is final and it is not necessary to permit the railroad company to have the question of fact passed upon by

a court subsequent to the legislation or order of the railroad commission; and if, as a result of all this, it has been conclusively established, by the order of the commission, that the people of Latta, which has something like eleven passenger trains a day, including through trains north and south which stop at Latta, have not adequate local accommodations: then we contend, as a matter of law, that this is no excuse for the railroad commission, in order to enforce adequate local accommodations, to invade the domain of interstate commerce and require these adequate local accommodations to be given by interfering with interstate commerce trains; but that it is the duty of the railroad commission, within its legitimate sphere of operation, to require these local accommodations to be adequately met by requiring other trains, which we submit can be done, and should be done, only after a trial and without extending its authority so as to invade interstate commerce. We submit that the invasion by the railroad commission of the state of South Carolina of the rights of interstate commerce, if it be a secondary duty, is not necessary for the purpose of enforcing the primary duty, because other means can be used, and therefore its management of the question in this way is both inexpedient and illegal, and is an assumption of authority that does not exist in the railroad commission.

On this point, we submit that this Court has misinterpreted the decisions of the United States Supreme Court cited in the decision and in respondent's argument, to-wit: the cases of Lake Shore *v.* Ohio, 173 U. S. 285, and Cleveland, etc., *v.* Illinois, 177 U. S. 206 514.

In the case of Lake Shore *v.* Ohio, 173 U. S. 285, the Supreme Court of the United States never held that the state authorities of Ohio could regulate interstate commerce trains or require them to stop at any point. It simply held that a statute requiring three trains a day to stop at villages containing over three thousand inhabitants was not unconstitutional. It simply held that the railroad company could not refuse to comply with this statute by making all of its trains interstate commerce trains, and then refuse to comply with the statute because they were interstate commerce trains. It did not undertake to say that the railroad company could not run as many interstate commerce trains as were desirable, and held distinctly that the state of Ohio could compel it to run as many trains as were desirable to comply with the local statute. The decision clearly defined the distinction between interstate commerce service and local service, and held conclusively that one was independent of the other, and the authority controlling one could not control the other. Certainly nothing in that decision could justify the present holding, that in order to furnish local accommodations the railroad commission of a state can operate upon and use interstate commerce facilities to effectuate its purpose. We can conceive of state regulation only legitimately affecting interstate commerce when the physical circumstances are such that only a certain number of trains could run through a state, and that these trains were so interdependent in their relation to local and interstate conditions that one duty could not be physically performed without

performing the other; and if such a condition could possibly
207 prevail, then the state authority, in requiring local conditions to be met, would control interstate commerce trains incidentally, which would not be by a direct attack upon them, but simply as an incidental result in requiring local conditions to be met. For instance, if the physical condition of the road would permit only one train a day, it would seem that both authorities could require this train to be used for their purposes: this, however, would hardly be a possible situation.

No such situation exists here. It does not appear that the railroad commission cannot require local conditions to be performed by requiring the railroad company to run an indefinite number of trains without interfering with the interstate commerce trains. It would seem that the United States Supreme Court has properly considered this Lake Shore, *supra*, decision in the case of Cleveland, etc. *v.* Ohio, *supra*, when it states that

"This case is readily distinguishable from the one under consideration," (which is the same question now under consideration) "in the fact that the statute of Ohio required only that three regular passenger trains should stop at every station containing 3,000 inhabitants, leaving the company at liberty to run as many through passenger trains exceeding three per day as it chose, without restriction as to stoppage at particular stations. In other words, it left open the loophole which the statute of Illinois has effectually closed."

It will be observed that the Lake Shore *v.* Ohio, *supra*, decision was not an ettempt as an original proposition to control interstate commerce trains. The Case of Cleveland, etc. *v.* Illinois, *supra*, as in the case at bar, was a direct attempt to control interstate commerce trains, and hence the distinction made by the Supreme Court. It is true the Supreme Court states in the Lake Shore case that it is the primary duty of a railroad company to provide
208 for local accommodations, but it does not state that the secondary duty is not of equal importance, or that the primary duty cannot and should not be required without sacrificing the secondary duty, or that it is not the duty of state legislation to enforce the primary duty without a denial of the right of the railroad company to perform the secondary duty.

It will be observed that in the case of Cleveland, etc. *v.* Illinois, *supra*, there was a direct attempt to apply the statute of the state of Illinois so as to require an interstate commerce train to stop at county seats. The question of adequate local accommodations arose, as in the case at bar, as an affirmative defense. The question went to the Supreme Court of the United States on a writ of error from an order of the state court overruling demurrer to the answer which admitted the local accommodations as alleged in the answer. The Supreme Court of the United States in that case simply held that, local accommodations being admitted, there was absolutely no reason for the contention that a statute of Illinois could affect, even incidentally, an interstate commerce train. There is no reason for contending that that decision holds that state legislation can apply to an interstate commerce train, except incidentally, as in the Cleveland

case, if local accommodations are not supplied; but in that case, if there had been any question as to the want of adequate local facilities, and if it had been held that these local facilities had not been adequately supplied, then the Supreme Court would have necessarily held that this want of local facilities should have been remedied by giving more local facilities, and the want of them would not have been a justification for interfering with the interstate com-
209 merce trains.

Therefore, we contend that the holding of the Court in the case at bar, that a railroad company has no right to furnish interstate commerce accommodations until "after all local conditions have been adequately met," is absolutely a *non sequitur,* because that expression is simply used in the case of Cleveland, etc. *v.* Illinois, *supra,* as a result of the admission by way of demurrer to the answer that adequate local accommodations were furnished, and could not be construed into the alternative of the proposition, that if they were not furnished, then state authority would be so enlarged as to permit it to control interstate commerce trains.

This view, we contend, is a proper explanation of the decisions of the United States Supreme Court, as clearly shown in the case of Ill. Cent. R. R. *v.* Miss. R. R. Commission, 138 Fed. Rep. 327, Circuit Court of Appeals. Respondent's counsel printed in their argument this case practically in full. We submit that its reasoning cannot be questioned, and we must conclude that this Court in rendering its decision has overlooked this opinion. In the case referred to, there was some question as to local accommodations being adequate or inadequate. The Court said that if they were adequate the case of Cleveland *v.* Illinois, *supra,* would be all-controlling. But inasmuch as it was contended that they were not adequate, the Court decided that if they were not adequate this would not give the state authorities the right to control interstate commerce trains to make them adequate, but that

"The Supreme Court, in the case just cited, repeats what it had theretofore held, that railways are bound primarily and
210 adequately to provide for the accommodation of those to whom they are directly tributary, and who have granted to them their franchise, and contributed to their construction. The State unquestionably has ample power to require the complainant company to furnish adequate facilities and accommodations to the town of Magnolia. The citizens of Magnolia have not asked for such relief as could be granted them without interfering with the rights of others. They ask only to have trains Nos. 1 and 3 to stop. These trains were designed and scheduled for through travel, and to comply with Government contracts to carry the mails from Chicago to New Orleans. If the statutes may be applied to stop through trains at Magnolia, they may be stopped at all stations in Mississippi. To require these trains to stop at all at Magnolia seems unnecessary and unreasonable. If the accommodations afforded are not adequate, why single out the through mail trains, and seek to convert them into local trains? Why not, under existing statutes, or statutes to be enacted, exert the police power of the State to improve the service by having better equipments on the three passenger trains now in

use from Magnolia, and, if they are insufficient, by requiring other trains? The citizens of Magnolia are entitled to sufficient accommodations, and the State has the power to enforce the right; but when such right can be enforced otherwise, it is unreasonable to do so by interfering with the rights of others equally entitled to the protection of the law.

"We are of opinion that the order of the Railroad Commission is invalid, and that the complainant is entitled to relief. The decree of the Circuit Court is reversed, and the case remanded, with instructions to enter a decree for the complainant."

Returning to the conclusion reached by this Court:

"In order that respondent may have the opportunity of discharging its primary duty in the premises, without stopping trains No. 32 and 35 on flag, the writ will be so framed as to confer upon the railroad company the alternative right to provide facilities substantially the same as those which would be afforded the citizens of Latta by stopping trains No. 32 and 35 on flag."

We may ask, What facilities would be substantially the same? To suit all parties, they must be defined. They cannot be defined in this case, because the issue has never been before the Court, and has never been defined by the railroad commission. No testimony relating to these facilities has been considered. The only way in which the question has ever been raised, is by way of affirmative de-
211 fense, and the Court has not considered this defense. The object of the action was, not to compel additional facilities as an original alternative proposition, but to stop trains Nos. 32 and 35 at Latta, S. C. We submit, that on the question of stopping trains Nos. 32 and 35 at Latta, the decision of the Court should have been, first, that regardless of the testimony, these trains being interstate commerce trains, they could not be interfered with by local legislation; and, second, if the right to stop them depended upon the proof of respondent's affirmative defense as to adequate accommodations, then the same was proven by the overwhelming weight of the testimony, which should have been considered, but was not considered, by the Court; and, third, that the matter of adequate local accommodations furnished otherwise than by interstate commerce trains should not be required as an original or alternative proposition, because this was not the object of the action, and in no sense has respondent had a hearing on this point, which question could only be determined in a proper proceeding to that end directed.

For reasons above given, we must earnestly submit to the Court the propriety of giving to the respondent, petitioner herein, a rehearing on the important questions involved.

WILLCOX & WILLCOX,
Respondent's Counsel.

212 STATE OF SOUTH CAROLINA, *Florence County:*

I hereby certify that I am a practising attorney, enrolled as such in the Supreme Court of the State of South Carolina; that I have no interest whatever in the above entitled action; that I have con-

sidered with care the above petition for a re-hearing, and believe there is merit in respondent's contention.

GEORGE GATTELL.

March 13, 1906.

Application this day having been made to me on the foregoing petition for re-hearing in the above stated case,

It is Ordered That respondent, Atlantic Coast Line Railroad Company, have leave to file said petition with the Clerk of the Supreme Court;

And it is Further Ordered That all proceedings herein be stayed until the further order of this Court upon due consideration of the petition.

C. A. WOODS,
Associate Justice.

March 17th 1906.

213 After careful consideration of the Petition for Rehearing in this case the Court is satisfied that no material principle of law or fact has been overlooked or disregarded. It is therefore ordered that the Petition for Rehearing be dismissed and the order heretofore granted staying the Remittitur be revoked.

Y. J. POPE, *C. J.*
EUGENE B. GARY, *A. J.*
IRA B. JONES, *A. J.*
C. A. WOODS, *A. J.*

Supreme Court of South Carolina, Clerk's Office, Columbia, S. C. Filed 9 Apr. 1906. U. R. Brooks, Clerk.

214 [Endorsed:] The State of South Carolina, in the Supreme Court. C. W. Garris, J. H. Wharton and B. L. Caughman, Railroad Commissioners, Petitioners-Plaintiffs, *against* Atlantic Coast Line Railroad Company, Defendant-Respondent. Petition for re-hearing. Supreme Court of South Carolina, Clerk's Office, Columbia, S. C. Filed 19 Mar. 1906. U. R. Brooks, Clerk. Willcox & Willcox, Counsel for Defendant-Respondent.

215 THE STATE OF SOUTH CAROLINA:

In the Supreme Court.

J. H. WHARTON, B. L. CAUGHMAN, and J. H. EARLE, who by Order of Court, prosecuted this case as Railroad Commissioners, Plaintiffs, in Lieu of C. W. GARRIS, J. H. WHARTON, and B. L. CAUGHMAN, Railroad Commissioners, Plaintiffs,

against

THE ATLANTIC COAST LINE RAILROAD COMPANY, Defendant.

The State of South Carolina to the Atlantic Coast Line Railroad Company, Greeting:

Whereas, C. W. Garris, J. H. Wharton and B. L. Caughman, did on the 22d day of October 1904, file an application to the Supreme

Court of this State for a Writ of Mandamus compelling the Atlantic Coast Line Railroad Company to obey the order of the Plaintiffs requiring it to stop certain trains at its station in the town of Latta, S. C., for the accommodation of passengers, which petition is as follows:

"(1.) That the said plaintiffs were at the time- hereinafter stated and still are, the duly qualified Railroad Commissioners of the State of South Carolina.

(2) That the Atlantic Coast Line Railroad Company was at the times hereinafter mentioned, and still is, a railroad corporation organized and existing under the laws of the State of South Carolina, and known by the name Atlantic Coast Line R. R. Company, and was the owner of and operating a certain railroad known as the Atlantic Coast Line Railroad, leading from the town of Wilson, through the town of Fayetteville, in the State of North Carolina, to Florence, in the State of South Carolina, and operating a branch line commonly known as the Latta Branch Railroad, leading from the town of Latta in Marion county, on said railroad, to the town of Clio, in Marlboro County, commonly known as the Latta Branch Railroad.

(3) That on June 7, 1904, certain citizens of the State of South Carolina, residing at Latta, and along the line of the said Latta Branch Railroad, filed a petition with the said plaintiffs, as Railroad Commissioners, of the State of South Carolina, alleging that the Atlantic Coast Line Railroad Company was furnishing insufficient acommodations for passengers travelling on said Railroad, and asking the said railroad company be compelled to stop its passenger trains numbers 32 and 35 at its station in the town of Latta, when flagged, for the purpose of receiving and delivering passengers at its station.

(4) That thereafter, on July 29, 1904, the said R. R. Com'rs of the State of South Carolina, after investigating the facts
216 stated in said petition, and after notice to and hearing the said above named defendant in reference to the facts of said petition, found as a matter of fact that sufficient accommodations were not furnished the citizens along the said Latta Branch Railroad and in the town of Latta by the Atlantic Coast Line Railroad Company at its station in Latta, South Carolina, and said Railroad Commissioners thereupon made and order that the said passenger trains numbers 32 and 35 operated by the said Atlantic Coast Line Railroad Co., should stop when flagged at the said Latta station on and after Aug. 1, 1904.

(5) That a copy of the said order of the R. R. Com'rs was served upon the Atlantic Coast Line R. R. Co. more than sixty days prior to the commencement of this action, but that the said R. R. Company had neglected and refused to comply with the said order to stop said trains at said station for the purpose of receiving and delivering passengers.

(6) That on October 7, 1904, the said R. R. Comrs. of the State of S. C. requested the Attorney Gen'l of the State of South Carolina to commence this action on their behalf to compel the said

R. R. Company to comply with said order, and to stop said trains numbers 32 and 35 on flag at the station in Latta for the purpose of receiving and discharging passengers on said trains."

And, whereas, the Hon. C. A. Woods, Associate Justice of the Supreme Court of S. C., had on Oct. 15, 1904, issued the following rule which was served on the Atlantic Coast Line Railroad Company along with the said application on October 18, 1904.

217 THE STATE OF SOUTH CAROLINA:

In the Supreme Court.

C. W. GARRIS, J. H. WHARTON, and B. L. CAUGHMAN, as Railroad Commissioners, Plaintiffs,

vs.

THE ATLANTIC COAST LINE RAILROAD CO., Defendant.

On hearing the verified complaint in the above entitled action, and on motion of U. X. Gunter, Jr. Esq., Attorney General for the plaintiffs it is ordered:

That the defendant show cause before me at my chambers in Marion on the 12th day of Nov. next, at 11 o'clock A. M. or if any they can why a writ of mandamus should not issue requiring that the trains mentioned in the complaint be stopped at the defendant's station in Latta for the purpose of receiving and discharging passengers.

That a copy of this order be served on the defendant company with the summons and complaint in this action.

(S'g'd) C. A. WOODS,
Associate Justice Supreme Court.

Oct. 15, 1904.

218 And, whereas, the defendant, the Atlantic Coast Line Railroad Company did demur to said petition on several grounds;

And, whereas, the said Court did overrule the said demurrer, with leave to the Defendant, the Atlantic Coast Line Railroad Company, to file a return to the rule to show cause, which had been issued;

And whereas, the said Atlantic Coast Line Railroad Company did file their return and Answer to the said Rule;

And whereas, on the 15th day of May, 1905, the Supreme Court did order testimony taken in the case before F. F. Covington, Referee;

And, whereas, the said F. F. Covington, as Referee, did hold sundry references, examine sundry witnesses, and did on the 27th day of December 1905, make his report to the said Court, accompanied by the testimony taken;

And whereas, the said Court did adjudge and file their judgment on the 26th day of Feb. 1906, that the Writ of Mandamus should be issued, but in order that the said Atlantic Coast Line Railroad Company may have the opportunity of discharging its primary duty in the premises, without stopping trains Nos. 32 and

35 on flag, that the Railroad Company should have the alternative right to provide facilities substantially the same as those which would be afforded the citizens of Latta by stopping trains No. 32 and 35 on flag;

Now, therefore, That due and speedy justice may be done, you the defendant, the Atlantic Coast Line Railroad Company, are hereby commanded that you, the said Atlantic Coast Line Railroad Company, do immediately after the receipt of this writ, stop your passenger trains Nos. 32 and 35 at your station in the town of Latta, when flagged, for the purpose of receiving and delivering passengers at said station, with the alternative right on your part to provide facilities substantially the same as those which would be afforded the citizens of Latta by stopping trains Nos. 32 and 35 on flag, and that you do pay the costs and disbursements of this proceeding, to be taxed by the Clerk of this Court, and in what manner this writ shall have been executed you make appear to said Supreme Court, and there returning this writ.

Witness U. R. Brooks, Esq., Clerk of the Supreme Court, and the seal of the said Court at the office of the Clerk of this Court in Columbia this 18th day of April A. D. 1906.

[Seal of Supreme Court.]

U. R. BROOKS, *Clerk.*

LE ROY F. YOUMANS,
Attorney General, and
M. C. WOODS,
Plaintiffs' Attorneys.

I certify this to be a true copy of the original.

Given under my hand and seal of the Supreme Court Apr. 18, 1906.

[SEAL.] U. R. BROOKS, *Clerk.*

A true copy.

U. R. BROOKS, *Clerk.*

Endosed on cover: File No. 20,260. South Carolina. Supreme Court. Term No. 296. Atlantic Coast Line Railroad Company, plaintiff in error, *vs.* J. H. Wharton, B. L. Caughman, and John H. Earle, as Railroad Commissioners of the State of South Carolina. Filed May 18th, 1906. File No. 20,260.

In the Supreme Court of the United States, October Term, 1906.

No. 296.

ATLANTIC COAST LINE RAILROAD COMPANY, Plaintiff in Error,

vs.

J. H. WHARTON, B. L. CAUGHMAN, and JOHN H. EARLE, as Railroad Commissioners of the State of South Carolina.

In Error to the Supreme Court of the State of South Carolina.

Stipulation that Certain Blue Prints be Added to the Transcript of the Record.

Now come the parties to the above entitled cause, The Atlantic Coast Line Railroad Company, by its attorney of record, P. A. Willcox, Esquire, and Messrs. J. H. Wharton, B. L. Caughman and John H. Earle as Railroad Commissioners of the State of South Carolina, by Le Roy F. Youmans, Esquire, the Attorney-General of said State, and stipulate and agree that the blue prints hereto annexed marked respectively "William J. Craig, Exhibit A," and "William J. Craig, Exhibit B," are true copies of the maps which were introduced in evidence by and on behalf of the Atlantic Coast Line Railroad Company in connection with the deposition of William J. Craig, and are true copies of the maps marked "Exhibit A" and "Exhibit B" referred to on page 101 of the printed transcript of the record of said cause now pending in the Supreme Court of the United States; and further stipulate and agree that the same may be made part of the transcript of record on file in this court in the above entitled cause.

ATLANTIC COAST LINE RAILROAD COMPANY,
By P. A. WILLCOX, *Its Attorney.*
J. H. WHARTON,
B. L. CAUGHMAN,
JOHN H. EARLE,
As Railroad Commissioners of the State of South Carolina,
By LE ROY F. YOUMANS, *Attorney-General.*

(Here follow blue prints marked Exhibits A & B.)

[Endorsed:] File No. 20260. Supreme Court U. S. October term, 1906. Term No. 296. Atlantic Coast Line R. R. Co., P. E., vs. J. H. Wharton *et al.*, R. R. Com'rs, &c. Stipulation for addition to record. Filed Aug. 4, 1906.